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MIRASSI RIGHT—II.

In a former issue we spoke of the claims put forward by mirassidars to waste lands, and of a pamphlet advocating those claims published by Mr. Ragoonath Row. In the scheme proposed by that gentleman for a new settlement of the Tanjore District we saw how the proposal, if carried out, would have the tendency to create a class of landlords paying a permanent settlement, and enjoying the whole of the lands now lying waste. This system of settlement is, we believe, what is advocated by all upholders of mirassi right; a right which, they urge, has descended to them from time immemorial. The policy of the English Government was declared to be that of continuing to the inhabitants of India all rights and privileges, which existed when the English took the reins of Government. This being the proclaimed policy, the mirassidars maintain that they are entitled to all the benefits which they can prove that they have enjoyed under former Governments. There is no doubt but what proprietors of land have always in this country been allowed certain privileges. Whether those privileges extend as far as the claims of the mirassidars do, and further, in what parts of this Presidency mirassi right actually exists, we now propose to discuss.

We will commence with the second point first. Some months ago, in our issue of November, we stated that a great number of mirassidars owed their existence to a creation of English Collectors. This opinion we again repeat. We fancy there can be no doubt that, if the British Government resolved to continue the privileges of the cultivators *as they found them*, there could not have existed in any of the countries under the Mahomedan rule any mirassi rights, as now claimed, whatsoever. That all land is the property of the ruling power, and has to pay tribute to the Government, is one of the primary maxims of the Mahomedan religion. The Koran even goes so far as to allow no unbelievers to hold any land at all, except on payment of tribute, and enjoins upon the faithful to "fight against them who believe not in God * * * *until they pay tribute* by right of subjection." (Chapter IX.) Where a Government is entitled to tribute from land, it is entitled to a tribute from *all* lands: the effect, however, of the claims of the mirassidars is to keep a certain quantity of land uncultivated, for their own use, without paying any tribute for it whatsoever. We may, therefore, not unreasonably assume that the existence of a mirassi or *proprietary* right under a Mussulman Government, would have been an anomaly, and that, if it existed, we can only look for it in those countries to which the Mahomedan rule did not extend.

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It is a significant fact that in most of the districts round the Presidency town, and which formerly formed a portion of the Carnatic kingdom, and were under the rule of the Nabob of Arcot, mirassidars, when about to represent a claim or a grievance, invariably preface their remarks by stating, "I am a mirassidar of fusly so and so," (the fusly so named being generally one in the commencement of this century). In South Arcot, and in some of the southern taluks of Chingleput and North Arcot, the phrase generally used is, "I am a mirassidar of Fusly '17." When we come to look closer at this, we find that this fusly was the one in which the claims of the mirassidars of these districts were finally settled, or, in other words, created. Were it true that these claims were prior to that date or immemorial, it is scarcely credible that the claimants should not fix an earlier date as the one when their rights first commenced. Chingleput and the vicinity of Madras was the part of the country where the English first acquired land. In the commencement of the last century, the Civil Servants at Madras held land to a large extent under the native Government, through their dubashes or native agents. Gradually the dubashes managed to get this land into their own hands, and from time to time, aided by the unsettled state of the country, they made fresh purchases from ryots, who, driven by war into the Presidency, were only too glad to sell their holdings. These dubashes gradually formed themselves into a class of landholders, employing first of all sub-renters to cultivate their lands, and latterly taking them under their own direct management. After some time the dubashes had gained themselves so much influence, that they formed a faction of great power, and the claims they advanced to rights and privileges were urged with no small pertinacity. Chingleput, or, as it was then called, "the jaghire," was thus in a continual state of confusion; the "upstart dubashes" were eternally clashing with the few remaining ryots, and all attempts to produce any unanimity failed. Such is the report of the "Select Committee on the affairs of the East India Company" dated 1812. When things were in this state, Lionel Place was made Collector of the jaghire, and his efforts were chiefly directed to the restoration of order. During the course of the inquiries made by Mr. Place, previous to making a settlement with the landholders, the ryots put forward what were called mirassi claims, and so unknown do these claims appear to have been up to this time, that the Select Committee state (page 12) "that it *was the first instance of any such claims being brought forward.*" These claims seem at first to have been made with a view to the assertion of a hereditary proprietary right in lands held by mirassidars, and it was urged that this right dated from the time of the Hindu rulers, and had been continued under the Mahomedan Government. The word "mirass" is undoubtedly of Arabic origin, and it is equally certain that it was used by Mahomedan Governments in speaking of certain tenures of land. We, however, are of opinion that it refers merely to the hereditary right of landholders to the land they possessed, but not to claims to other lands which they did not hold. Two points may serve to warrant our presumption,—firstly, the indiscriminate way in which the term "mirassidar" is everywhere, in the South of India, used, not only with reference to land-holdings, but also with reference to service tenures. A village monigar, a pagoda goorookal, and a common toty have each a mirassi right to the appointment he holds and to the emoluments attached to it, *but not to any other*. This mirassi right is simply an hereditary one. The sole and simple privilege attached to it is, that the appoint-

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ment will descend, according to the ordinary course of things, from father to son. A word which is used equally with reference to land and service tenures must surely have the same meaning in either instance. Those privileges which do not exist in a service "mirass" can scarcely be assumed to exist in a land "mirass." Secondly: in order to prove that the privileges claimed, dated from the times of the Hindu rajahs, the would-be mirassidars urged that there was a recognized Malabar expression for the Arabic term. The word they used, and which is still in use as a synonym of "mirass," is the word *caniatchy*, derived from *cani* = land and *atchy* = heritage. The Malabar synonym, therefore, has precisely the same signification as what we have attached to the Arabic title. We have seen how restricted the meaning of the Arabic title is with regard to service tenures, and we can, therefore, scarcely be said to be incorrect, when we maintain that, as regards the land tenure, the word "mirass" means nothing more than what it does as regards a service tenure, nor more than what the vernacular synonym warrants us in attaching to it. This hereditary right, however, has been finally settled. It has been acknowledged that, as long as a ryot pays the rent of his holding, so long will it be continued in his enjoyment, and in the same way enactments have been passed to continue to village servants and their heirs the emoluments attached to the offices they fill *as long* as they perform the work.

The claims put forward by the mirassidars of the jaghire found a ready supporter in Mr. Place, whom we shall not be far from wrong in styling the "father of mirassidars." The claim, which was probably at first only advanced in order to secure an hereditary right to the land occupied, gradually developed. Settlements which had in reality been only temporary ones, or such as had been made by the Nabobs during years of war, when they were only anxious to raise money as quickly as possible, were cited as the basis on which to form a new and permanent settlement, and were alleged to be the tenures on which the land had been held from time immemorial. All the complications of "Swatantrams," "Pardie marahs," and "Mirdie marahs," or the manner in which the crops were divided between the land-owner and the tenant arose, and were all brought forward as showing the proprietary right of the land-owner, as opposed to that of the *poyacarry*, and as independent of the Government right to the land, whereas in reality these fees, apportioned on division of the crops, had hitherto been paid, not because the land-owners were entitled to them from time immemorial, but because, during the recent years of disorder and almost anarchy, these fees had been paid by the poorer land-holders to the richer, in order to gain from the latter a protection which the Government itself was unable to afford. When, therefore, a period of peace set in, and when a new Government, able to protect its subjects, took the place of the former weak and incompetent rulers, these arrangements, which had been made only recently during the years of misrule, should not have been assumed as the basis on which land tenures had always been held.

We are, therefore, of opinion that in all districts attached to, or forming a part of, the Carnatic, mirassidars or landholders having a vested right, not only in the lands for which they pay rent, but also in the uncultivated lands attached to their villages, and having also a right to exact fees, as mirassidars from poyacarries or strangers, cultivating those waste lands, are a class of men which never existed in those districts, until their existence was recognized for the first time by Mr. Place, who, considering that usages, which had originated in times

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of anarchy and war, were of immemorial age, first gave to the would-be mirassidars a *locus standi* from which they were then able to put forward fresh claims. The result has been that the Board of Revenue, the local Government, and the Board of Directors at home have been continually in a state of perplexity. Contradictory orders have been given, and the uncertainty only tended to make the claimants more energetic in pressing their claims, in order that the position they asked for, might actually be defined by law. The numerous decrees which have been given in the High Court and the Zillah Civil Courts, on the mirassi question, have by no means helped to solve the difficulty. In a future issue we propose to give a brief resumé of the principal Court decrees and Government orders which have been passed.

We shall, therefore, answer the second of the questions, we proposed at the commencement of this article, by stating that mirassi right was, under the Mahomedan Governments, simply a right which confirmed the possession of land in the family of the holder as long as he paid the rent thereof; that the land tenure was closely allied to service tenure; and that the same name was given to both; and finally, that to have allowed a race of Hindu landholders, with a proprietary right in all the soil attached to each village, and a right which could not be interfered with by the Government, would have been an anomaly under a Mahomedan Government, and could, therefore, have had no recognized or legal existence, however it may have existed as a local usage or as a temporary custom which had arisen owing to the force of circumstances. If, therefore, mirassi right exists anywhere in the South of India, it will be found only in those countries which were under Hindu rule until they passed into British hands, such as Tanjore and Madura. It is indisputable that in these districts there exists a class of men, whom we found in the enjoyment of certain privileges. In our next notice of this subject we shall endeavour to show how far those privileges have extended, and how far the present mirassidars are justified in citing them as a proof of the justice of their present claims.

BRITISH RULE IN INDIA.

We have arrived at a period in the history of "Japhet dwelling in the tents of Shem," when it can do no harm, but probably a great deal of good, to look back upon British advent and British rule in this country. It is a period when it behoves our statesmen seriously to cast about in their minds and inquire what ought to be the future policy of Government in India. They can no longer be content to glide along the old grooves of past circumstances and events. Education has of late years effected great changes in the sentiments of the people: they are awakening to a sense of their rights as citizens; they no longer submit in silence, or look on with indifference; but they are beginning, with almost European frankness, to examine the policy of the Government which rules them, and to discuss the advantages and privileges which the circumstances of the present day require. Even rulers as well as ruled are already familiar with the hitherto startling doctrine, "let the children of the soil share in the Government of their country." At a time like this especially, when the natives of India see two mighty European nations arrayed against each other regardless of what Great Britain may think or say, it is a question worth considering what position England is likely to occupy hereafter in the estimation of her own subjects, if not among the nations of the world. In herself, she is small—nay, almost insignificant—but in the gigantic mission she has

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been able to accomplish, in the mighty dependencies she has added to her little island rule, and in the aggregate of her splendid development and resources, she is truly grand and great, and may still be said to be foremost among nations and powers. And it is not too much to add that, were she to-morrow to be deprived of all her numerous dependencies, big and small, but possessing India alone, she would still be second to no other nation on earth, if not absolute mistress of the world. What, then, were we yesterday, and what are we to-day, in this land of the sun? What has been our past career; what are our future responsibilities towards the people of this country?

When the little band of adventurers from the far distant island first established a footing on the great peninsula of Hindustan, the mighty Akbar reigned as Great Mogul. He was both a warlike and a prudent prince, who sought, while physically subduing the restless hordes that surrounded him, mentally to enlighten them and to improve their moral and social condition, according to his instincts. He was succeeded after a lapse of fifty years, filled in by the reigns of Jehangeer and Shah Jehan, by the great Aurungzebe, who waged war for years against the ever-encroaching Mahrattas, attached many of the rajahs and independent chiefs as his tributaries, planted his viceroys in different districts, and nearly succeeded in bringing the whole peninsula under his single dominion. His territories extended from 10 to 35 degrees in latitude, and nearly as many in longitude; and his revenue amounted to £32,000,000 sterling. The magnificence of his court was described by intelligent travellers as exceeding anything that Europeans had ever seen. His splendid throne, set with diamonds, rubies, emeralds, and pearls, and worth more than six millions sterling,—the very floor of his palace paved with precious stones,—his elephants fed on meat, and regaled with sugar and brandy, and taught to bend the knee in the presence of their mighty master—his richly caparisoned horses, their bridles set with costly gems—his noble followers, each a prince in his way—his wondrous army of retainers, so large that his camp was thirty miles in circuit and contained half a million of people—all made up a state of pomp and circumstance that dazzled the minds of Europeans, and led those who had invested their money in the new trading scheme to expect much more than they could ever realize, though stupendously great have been the results actually accomplished in the course of time. Providence, however, had not destined the followers of the Prophet to be the great rulers of India. That destiny was reserved for the Anglo-Saxon race—for the successors of the little handful of enterprizing men who left home and country, not for territorial aggrandizement by conquest, but for the peaceful purposes of commerce and gain. The descendants of the illustrious Aurungzebe were feeble and unwarlike; and the empire declined, and soon after fell into the hands of the victorious Persians. The Affghans followed. The Rajpoots, the Jháts, and the Sikhs sprang to arms. The conquered rajahs ceased to pay any respect to the peacock throne; and the turbulent Mahrattas, ever ready to take advantage of embarrassed rulers, emerged from their fastnesses and aimed at the highest power for themselves. Wherever these famous warriors appeared, the frightened inhabitants fled to the mountains; wherever they planted their feet, all vegetation languished, standing crops were destroyed, and the horrors of famine ensued. From Calcutta, where the Mahratta ditch tells its own tale even to the present generation, to Delhi, where they levied blackmail on the wretched sovereign, the barbarians

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kept all races alike in constant terror. The country being in this unsettled state, the viceroys contented themselves with sending occasional presents to the Court at Delhi, and became in all but name so many independent sovereigns.

In the meantime, the little community of English settlers had been growing. So had the French and Portuguese adventurers. The English, indeed, at this time, were not at all by any means in advance of their rivals, and had, during the latter part of the reign of Aurungzebe, a very narrow escape of being turned out of the country altogether; but their commerce was important to the native princes, who interceded for them with the Great Mogul, and they were allowed to remain and prosper. In 1600, Queen Elizabeth granted a royal charter to the Association which formed the nucleus of the afterward world-renowned East India Company. Their first depôt was at Surat. In 1640 they obtained from a Hindu chief a spot of ground on which Madras now stands, and where they built Fort St. George. In 1698 they acquired a grant of land in Bengal from the Great Mogul, and there they built Fort William, and commenced a goodly city, now not very inaptly called "the city of palaces"—Calcutta. Then, Bombay, the dowry of Queen Catherine of Braganza, was sold to the Company by the king, her husband. And thus, the English acquired three stations or settlements, wide apart for carrying on their increasing commerce. By a succession of events scarcely to have been anticipated, these adventurous traders, who were utterly innocent of any desire of conquest, who were, indeed, quite unlearned in the art of war, who had no army and desired none, became warriors and conquerors in spite of themselves. First, the French caballed with the native princes and tried to dispossess the English. But Robert Clive, the civilian writer, snatched his countrymen from annihilation, and led them from one victory to another, until, by sheer force of will, he not only rescued them from such a fate, but gave them a power in the Carnatic they had never dreamt of possessing. Not only had he to make soldiers for the occasion, but he had himself to learn the art of war before he could teach his men to fight. Well did Chatham call him the "heaven-born general." He triumphed over every obstacle both in the Carnatic, and in Bengal, whither he was soon called to do for his country there what he had already done for her elsewhere. We need not relate how the despot who then ruled Bengal, Surajah Dowlah, took possession of Calcutta, and incarcerated the unhappy English in the famous Black Hole. Clive dragged the tyrant down to the dust, and afterwards deposed him and put Meer Jaffeer in his place by force of British power. Then the French made another attempt to dispossess the English at Madras; but the victory of Wandewash, gained by Sir Eyre Coote, resulted in the establishment of English supremacy and the termination of French power in India. And thus did peaceful traders, in spite of themselves, become conquering soldiers.

But the English had still many foes to encounter. The Mysoreans in the south, and the Mahrattas everywhere, needed all their energy and skill. Meanwhile the power, which the onward course of events had compelled the Home Government to delegate to them, fully employed their time and called for the exercise of prompt yet prudent administrative action. In 1773, when Hastings became Governor-General, there was a large standing army, composed mainly of native sepoys under European Officers. The revenues of the Company—thanks to the energy and diplomacy, but, we are sorry to be obliged to add, the unscrupulous conduct of Warren Hastings—recovered from the collapse incidental to

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converting all the English clerks and merchant factors into soldiers and diplomatists. From 1773 to the present time, India has been ruled by a Governor-General with various modifications in his power and in his executive staff. During this period we have had war upon war, and we may add mutiny after mutiny; and at the present day, notwithstanding the civilizing influences of British rule, commerce, and education, we can only hold India and ensure peace and safety for the English residents by means of a large and most expensive standing army. India is now governed by a Viceroy, whose appointment is in the hands of the Home Government; but, unfortunately for the complete prosperity of the country, his power for good, always supposing that he is equal to the occasion, is trammelled both by local prejudice here and by the ignorance of the Secretary of State at home. In spite, however, of all shortcomings in the past, and the ample room that there is for amendment both in the present and in the future, it is a grand fact, full of credit and glory to the English name, that a little band of adventurous traders have acquired for the nation an empire containing 180 millions of inhabitants.

The question, then, arises—a question pregnant with interest to every English mind—are these millions of human beings *really* better off under our rule than they would have been had our armies never entered India? When the Moslem power melted away, there was no corresponding power in the whole peninsula to take its place, and the country, therefore, became broken up into fragmentary kingdoms and principalities, which were ever conspiring to overthrow each other, and all by turns leagued with, or against, the robber horde of Mahrattas. No unity could ever spring from such a chaos, no morality flourish where all alike was immoral, and no civilization advance when all were debased by the same grovelling superstition. We have, by the mere force of our great strength, united into one mighty kingdom these princely fragments, and have endeavoured to govern them by a uniform code of laws on principles of the strictest justice. We have opposed the power of a pure religion to Hindu superstition and Moslem bigotry, and the principles of honour and sincerity to deceit and falsehood. But the same difficulty which met the conqueror of old meets the conqueror of to-day. Neither one, nor the other, has been able to overcome the barrier of "caste." The brahmin of to-day is still the brahmin of the tenth century, to whose mind the pollution of the Christian is quite as bad as that of the Mussulman. The great divisions of mankind in India have divided and subdivided into an infinity of sects or castes; and still each class preserves its peculiar distinction. A distinctive trade or calling is as strictly hereditary as entailed property in England; and a Hindu, without any shame or misgiving, will record himself as an hereditary beggar, robber, hangman, or buffoon. We send out missionaries; but there are comparatively few conversions, nor are they likely to be frequent in a country where the consequent loss of caste is, not only utter disgrace, but actual expulsion from home and severance of all family ties. We have given India good roads, the railway, and the telegraph. We have opened for the Hindu the road to civilization and moral elevation; but, in doing so, we have awakened higher aims and desires, which, at present at all events, there does not seem much opportunity of realizing. On the one hand, by means of a European education, we have unsettled their faith without offering them a substitute system which they will accept; and, on the other hand, by morally elevating them, we have made them discontented with their condition of a conquered people, and yet will not give them

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opportunities of participating in the government of themselves. In the interest of the world at large, as well as that of the native races themselves, there cannot be the smallest room to doubt that it is far better that India should be as she now is, than that she should be, as we found her, split up into factions under tyrant despots, great and small. But there is much yet to be done for her, not only in justice to the people themselves, but for the very credit of the English name. What the future of India may be, it is difficult to foresee; what it shall be, is a problem very difficult to solve. Whether our vocation is simply to educate the native races up to the point of self-government, and then hand over to them an empire purified and strengthened—or whether it is our mission to retain India for all time, as she now is, the most glorious of the many appendages of the British Crown—is a question worth the consideration of our best statesmen and most advanced philosophers. But we feel certain, from our knowledge of the people, that they would prefer the proud privilege of being "British subjects," *in fact* and not only in name, rather than be left to the lottery of entire self-government, or the certainty of being a prey to some powerful, but not over-scrupulous, European power. In either case, however, England has yet a great work to perform, and a heavy responsibility lies upon India's rulers. We have awakened desires and instilled instincts which it is our duty to gratify; and while retaining the highest power in our own hands, we must nevertheless give the children of the soil all the privileges of a free people, all the opportunity of social advancement, every facility to share in the government of themselves, without any distinction of caste, colour, or creed.

HIGH COURT—MADRAS.

(Appellate Side.)

SCOTLAND, C. J., AND COLLETT, J.

Rent Recovery Act—Sections 41 *to* 43*—Collector's proceedings—Appeal.*

Where warrants for dispossessing certain ryots were issued under Section 41, *Act VIII of* 1865, *and the Collector, on petitions under Section* 43, *referred the parties to arbitration and passed an order in accordance with the award, the Civil Judge set aside the order on the ground of misjoinder.*

HELD, *that the Civil Court has jurisdiction to hear a regular appeal under the Rent Recovery Act, only when there has been a judgment by a Collector in a summary suit under that Act; and that the proceedings taken under Sections* 41 *to* 43 *were ministerial on the part of the Collector, and not in the nature of a suit.*

Civil Mis. Petition 96 *of* 1870.

Maidai Dalawy Kumarasawmy Moodelliar and two others *v.* Nallakannu Taven and thirty-one others.

THE plaintiffs (landlords) ejected defendants, (their tenants), under Section 41 of Act VIII of 1865; the tenants appealed under Section 43, and pleaded that they had paid what was due, and denied the agreement produced by the landlords. The Sub-Collector, Mr. Sewell, referred all parties to arbitration, requiring the arbitrators to find on the three following issues;—first, whether puttahs and muchilkas had been exchanged or dispensed with between the parties, so as to enable the defendants to apply for warrants of ejectment under Section 41 of Act VIII of 1865; second, whether the ryots had, or had not, paid the mélvaram for Fusly 1276 to the lessees; third, whether there was sufficient property on the premises of the ryots to cover the amount of arrears alleged to be due. The arbitrators found first, that muchilkas had been given by the ryots to their landlords; second, that they had not paid the mélvaram for Fusly 1276; and third, that they had not sufficient property to cover the amount of arrears alleged to be due. On these findings, the Sub-Collector granted the landlords the warrants of ejectment applied for by them, which had been previously granted, but had been suspended during the pendency of this suit. The ryots then appealed to the Civil Court of Tinnevelly. The Civil Judge (Mr. Child) was of opinion, that it was utterly impossible to give a just decree where the parties were so improperly joined together. The three landlords were all separate from each other; so were the thirty-eight ryots; and their individual rights might differ very much. The Sub-Collector had acted in accordance

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with the provisions of the old Act, and had not complied with the provisions of Chapter 6 of the Civil Procedure Code, as required by Section 74 of the present Rent Recovery Act, (VIII of 1865). In fact, Mr. Child was of opinion, that the whole proceedings were illegal and unsatisfactory; the more unsatisfactory, as the misjoinder was the fault of the Sub-Collector, and not of the ryots who had each presented a separate petition. The Civil Judge, therefore, reversed the decree, and directed the Sub-Collector to take up each case separately, and try the matter *de novo*. He was further of opinion, that the case was one of great importance, as it appeared that the ryots had occupation rights, and ejectment was, therefore, a serious matter. From this decision, the landlords appealed to the High Court on the following, among other, grounds—that the Civil Judge had acted without jurisdiction in this case; that the Collector's decision, passed in accordance with the award of the arbitrators, was final under the Civil Procedure Code; that the proceedings held by the Civil Judge in appeal therefrom were null and void, *ab initio;* and that there was no objection to several landlords joining in the same suit when the issues in dispute were the same or similar, and when all parties concerned agreed to such an arrangement. Srinivassa Charry for special appellants; Kuppuramasawmi Sastry for special respondents.

The High Court delivered the following

Judgment:—*3rd May* 1870.

In this case, certain landholders applied to the Collector for warrants to be put into possession of lands under Section 41, Madras Act VIII of 1865. The warrants were issued, but some of the ryots appealed under Section 43, by presenting ordinary petitions. In disposing of those petitions, the Collector referred certain questions to arbitrators, named by the parties, and then made an order in accordance with their award. The Civil Court has heard an appeal from this order. It is quite clear that Section 69 gives the Civil Court jurisdiction to hear a regular appeal, only when there has been a judgment by the Collector in a summary suit under the Act. Section 50 and the following sections provide the procedure to be observed in summary suits before the Collector; and the proceedings taken in this instance under Sections 41 to 43, were not of the nature of a suit, or governed by the procedure in Section 50 and following sections. The landholder is entitled, on application, to the issue of a warrant under Section 41, and that is a ministerial act of the Collector; upon the production of the written statement required by the section. The warrant is executed by the Police, unless the ryot appeals to the Collector to show cause why the warrant should not be executed, and Section 44 contemplates that the execution of the warrant may be followed by a civil suit to reverse the delivery of possession. Clearly, therefore, the Collector had, on this occasion, no summary suit before him: he was merely executing a special summary remedy given to the landholder against the ryot for non-payment of rent, and that was petitioned against. That the Sub-Collector has, in the present instance, chosen to designate his proceedings a summary suit, cannot, of course, constitute them such. It was also, of course, open to the Collector, in performing this as well as any other executive duty, to refer any questions in dispute between the parties to arbitrators named by them. The Civil Court, therefore, in hearing the appeal, exercised a jurisdiction not vested in it by law, and the case falls within Section 35, Act XXIII of 1861, though it cannot properly be disposed of by us as a special appeal. The record being before us, we think that it is our duty to proceed under Section 35; and we shall accordingly make an order setting aside the decision passed on appeal by the Civil Court.

As is usual under this section, we shall make no order as to costs.

SCOTLAND, C. J., AND COLLETT, J.

Ferry—Lease—Suretyship—Principal and agent —Construction of documents.

Where A took the lease of a ferry with B as his surety, and, to indemnify him, executed a karar stipulating that the collections were to be made through B; and where B, on this karar, dispossessed A of the ferry, alleging that he (A) was simply the agent, while he (B) was the party really beneficially interested—

HELD, *that the reasonable and natural construction of the documents was, that the transaction was what it purported to be, namely, a lease of the ferry to A in his name and for his benefit, and an agreement to protect B from any loss as surety; and that, whatever sums B received beyond the amount of his liability, he received and held in trust for A.*

S. A. 237 *of* 1869.

Rungan and two others *v.* Tandava Chetty.

PLAINTIFFS took the ferry of Pallipalium on a ten-years' lease from the agraharamdars in 1866 at Rupees 305 per annum, exchanging the customary puttah and muchilka. Defendant became guaranteed for the due fulfilment of the contract on the security of the puttah, which plaintiffs gave him. In May 1867, defendant took forcible management of the ferry; plaintiffs, therefore, brought this suit to restrain him, to establish their sole right to the ferry-rent, and to recover collections to the value of Rupees 400 and after-revenue. The defendant admitted his suretyship; but stated

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that, after the puttah executed in September 1866, plaintiffs executed to him a karar, to the effect that he had the right to profits and losses; that they were his employés; and that the daily collections were to be paid to him. He further alleged that he had been managing the ferry collections; that, as plaintiffs had fraudulently misappropriated Rupees 100, he had removed them; that he had not taken forcible possession; that the collections were not so large as represented; and that plaintiffs had received wages from him. Mr. Shunker, the District Munsiff of Salem, found that plaintiffs relied mainly on their Exhibit A., which purported to be a muchilka executed by them to the agraharamdars, from whom they leased the ferry, and had received the usual puttah. This document was admitted by defendant, and proved by the lessors. Defendant, on the other hand, relied on Exhibit XI., a karar subsequently executed to him by plaintiffs. The District Munsiff failed to discover in these documents anything that would justify the recognition of the defendant as the rightful proprietor of the ferry. He found the muchilka plain and unmistakable in its terms: it stated that plaintiffs had taken out the puttah *themselves*, and that they would pay the kist, &c., through the surety; indeed, to his mind it explained Document XI., and distinctly submitted the point of forfeiture (in the event of non-performance on plaintiffs' part) to the agraharamdars, and not to the defendant.

The District Munsiff, therefore, found for the plaintiffs, saddling defendant with all costs. Defendant appealed to the Civil Court of Salem. Mr. Chamier, the Civil Judge, admitted that there was no doubt of the plaintiffs being the actual lessees of the ferry, but was of opinion that it was quite open to defendant to show that this was merely nominal, and that he alone possessed a beneficial interest in the lease. From the karar (Exhibit XI.) it seemed clear that defendant had procured the lease from the agraharamdars for the plaintiffs; that he received the puttah for them; that, in consideration of this, plaintiffs agreed to observe the conditions of the lease, and to pay over *all* their collections to him; and further, to give up their right to the ferry if any dispute should arise. This instrument, then, was to be considered as valid in law and binding on the parties: it also showed the true nature of the lease, namely, that plaintiffs were merely the agents of the defendant, liable to be discharged if anything went wrong. A dispute arose in consequence of plaintiffs having misappropriated some of the collections, and defendant, from that time, took the management of the ferry out of their hands. This, the Civil Judge held, he was quite competent to do; further, that XI. proved that plaintiffs had no beneficial interest in the lease, as all profits were to go to defendant, while their remuneration was to consist of a percentage on the collections; that, as plaintiffs did not complain to the Magistrate when the ferry was taken out of their hands, it was clear they did not then think they had any substantial rights under the lease. For all these reasons, Mr. Chamier reversed the Munsiff's decision, and dismissed the suit. Plaintiffs appealed to the High Court on the following, among other, grounds—that the true construction of the agreement was that defendant was security to the lessors for due performance by plaintiffs, and that Exhibit XI., was to operate as an indemnity to defendant; and that, upon the construction placed upon it by the Civil Judge, there would be no consideration for XI. Mayne and Rama Row for appellants; Sunjiva Row for respondent.

The High Court delivered the following

Judgment:—8th December 1869.

The questions for decision in this case were—first, as to the real relation of plaintiffs and defendant as constituted by Exhibits A. and No. XI.; and secondly, whether the defendant was justified, under the terms of Exhibit No. XI., in entering upon possession of the ferry. As the first question turns entirely upon the right construction of the two documents, its consideration is open to us on special appeal. Exhibit A. is in form a muchilka, or counterpart to a lease executed by the plaintiffs to the agraharamdars, the owners of the ferry. It is dated the 10th September 1866, and in form the defendant became surety for the plaintiffs to the agraharamdars for the due performance of the stipulations in Exhibit A. Exhibit No. XI., is dated the 18th September 1866, and is executed by the plaintiffs to the defendant; and its obvious and natural purpose was, as its terms show, to indemnify the defendant for the liability he had undertaken towards the agraharamdars, as surety for the plaintiffs. The stipulation that all collections were to be paid over to the defendant or to his goomastah, was naturally enough provided to protect the defendant from any loss as surety. But there is nothing, either in this stipulation or in any other part of the two documents, to lead to the conclusion that the real purpose of the documents was, a lease to the plaintiffs, but in their names only, and for the real and sole benefit of the defendant. The natural and reasonable construction of the documents is that the transaction was, what it purports to have been, a lease of the ferry to the plaintiffs in their names and for their benefit, with the defendant as their surety, and their agreement for the purpose of protecting the defendant from any loss as surety. Whatever sums the defendant might receive under such agreement, beyond the amount of his liability as surety, would be

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held by him in trust for the benefit of the plaintiffs. We, therefore, think that the late Civil Judge has, upon the first question, taken an erroneous view as to the relation of the parties.

The second question, so far as it is a question of fact, is not for our consideration; and, if there had been a clear finding upon it by the lower Courts, we should be concluded by it. In the Court of first instance, there certainly was no finding at all upon it, though, in the view taken by that Court upon the first question, it should have gone on to consider the second question. In the middle of the judgment of the late Civil Judge, there occurs a sentence which has reference to the second question; but it is so mixed up with, and affected by, his judgment upon the first question, that it cannot, we think, be rightly regarded as a clear finding upon it. Thus, the Civil Judge does not find what was the amount of the collections kept back by the plaintiff; and, in his view of the first question, it was immaterial; but, if it should turn out that the defendant had received the full amount of his liability as surety, it would have to be considered whether the fact that the plaintiffs retained only what the defendant would, as trustee for them, have been bound at once to pay back to them, could be treated as a forfeiture under Exhibit No. XI., entitling the defendant to enter upon possession of the ferry. As we differ from the judgment of the Civil Court upon the first question, we think that it is essential to a right decision of this case, that we should now send down for the decision of the Civil Court an issue embodying the second question in this appeal, namely, Whether there was a forfeiture by the plaintiffs, under the terms of Exhibit No. XI., entitling the defendant to enter upon, and keep possession of the ferry.

[To this issue the Civil Judge returned a finding on the 14th February 1870, to the effect that there was no forfeiture by plaintiffs, under the terms of Exhibit XI., entitling the defendant to enter upon, and keep possession of the ferry.]

HIGH COURT—CALCUTTA.

[APPELLATE—CIVIL.]

NORMAN, OFFICIATING CHIEF JUSTICE, and BAYLEY and HOBHOUSE, SIR C. P., *Bart.*, J. J.

Harrak Sing and another (defendants) *v.* Tulsi Ram Sahu (plaintiff.)*

Petition of appeal under Section 15, Letters Patent —Time for presenting the petition—Practice— Suit for enhancement of rent—Act X of 1859, Section 4—Pleading.

Per NORMAN *and* HOBHOUSE, J. J., (BAYLEY, J., *dissenting*), HELD *that, in the present case, the defendant had not, either in the written statement filed by him or by his statements in examination, raised the question whether he was entitled to the benefit of Section 4 of Act X of 1859.*

(Per PEACOCK, C. J., *and* KEMP *and* MACPHERSON, J. J.—*A petition of appeal, under Section 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented within thirty days from the time when the written judgments of the Division Bench are put in. The difference of practice on the Original and Appellate Jurisdictions of the High Court contrasted*).

THIS was a suit for enhancement of rent, on the ground of improvements caused to the land by irrigation, which had been made at the plaintiff's expense. It was admitted by the defendants that the plaintiff had been at some expense in providing means of irrigation for the village by repairing an *ahur*, but their witnesses denied that their land had received any benefit from the irrigation.

The defendants also stated that their rent had been unchanged for more than twenty years; but not that they had a right to hold at fixed rates, on the ground of their rent having been unchanged since the time of the Permanent Settlement. No issue, therefore, was fixed on the point.

The defendants in their written statement said that "by a fixed hereditary holding *(gujasta* "*maurasi)* from ancient times, more than twenty " years, without change or increase or decrease of " rent, this land has been held."

In giving his evidence, one of them said, " From the time of my father this cultivation is " *khilmi* ancestral. In 1263 (1856) the lands under " cultivation were under my possession, and, since " my lands had been *khilmi jote*, from that time " one *patta* or rate has prevailed."

The plaintiff also claimed enhancement on the ground of increased area; but, as this ground was not mentioned in the notice, his claim was disallowed.

The Assistant Collector gave plaintiff a decree for the amount stated in the notice, Rupees 151-8-3.

The Judge, on appeal by the defendants, modified the decree as being in excess of what it appeared proper to give under a report of a local inquiry previously ordered by him.

* Appeal No. 1 of 1870, under Section 15 of the Letters Patent, against the decision of Mr. Justice L. S. Jackson, which prevailed on that of Mr. Justice Mitter in Special Appeal, No. 1,208, of 1868, dated the 25th November 1869, the said Judges being divided in opinion.

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The defendants then appealed to the High Court on the grounds—

(1.) That, when the Judge had found that the plaintiff was not entitled to the enhanced rate which he claimed in respect of all the lands, the suit should have been dismissed.

(2.) When the plaintiff could not prove that he was entitled to the rates claimed in the plaint, his suit in regard to such land should have been dismissed.

(3.) The Courts below should have fixed and tried an issue under Section 4, Act X of 1859, which was distinctly and sufficiently pleaded.

(4.) It had not been found that the productive powers of the land had increased at all from former years; the mere fact of repairing an *ahur* would not entitle plaintiffs to enhance, until it was found that the expense incurred by the zemindar resulted in the increase of the productive powers. A general allegation as to the increase was not sufficient.

The appeal was heard by L. S. Jackson and Mitter, J. J., who on the 25th November 1868 delivered judgments as follow:—

Jackson, J.—The Court is unfortunately divided in opinion in this case. I, therefore, state my own view, of course with some degree of diffidence, because I cannot but feel the utmost deference for the opinion of Mr. Justice Dwarkanath Mitter on such questions. At the same time I entertain no doubt upon the matter, and it is one which I have so frequently considered that I feel no hesitation in stating my opinion at once.

I do not at all depart from the view I expressed on the same question in the case of *Dhun Singh Roy* v. *Chunder Kant Mookerjee*.* We (L. S. Jackson and Phear, J. J.) there said:—"It may be "considered as fully settled that, where a ryot, in "his answer to a suit for enhancement, pleads "possession for a very long time, and expressly "claims the benefit of the presumption under "Section 4, that is tantamount to his naming the "Permanent Settlement; and so of persons hold-"ing tenures under Section 16." That proposition appears to me still to be quite maintainable in cases where the allegations of the defendant and the proof given make it clear that he relied upon a possession so ancient as to bring him within the terms of Section 4, though he has not expressly referred it to the date of the Permanent Settlement. But where the defendant's allegation, whether oral or written, suggests a commencement of the holding at a much later period and his evidence is of the same character, then I do not think we can give any such effect to his defence, or that the presumption claimed will arise from the proof of twenty years' occupation at a rent unchanged.

It is no doubt the duty of the Court to lay down the proper issues; and, if it appeared that in this case the issue of holding at unvaried rents from the time of the Permanent Settlement properly arose, it would be our duty to remand the case that such issue might be framed and tried; but it seems to me quite impossible, from the tenor of the defendants' title and from their oral examination, to collect any such allegation as that theirs was a holding which had commenced previously to the Permanent Settlement, and had continued from that time to the present day at unchanged rates.

* 4 W. R., Act X Rul., 43.

The defendants merely state that the land has come down to them from their father, by whom it was first brought into cultivation; and I am bound to say that this statement is distinctly confirmed by the testimony of one of the plaintiff's witnesses. I look upon it, I confess, as a very serious matter to decide between landlord and tenant, not merely that the landlord is not entitled to the particular rent which he claims in the suit before the Court, but that the ryot is exempt from any enhancement of his rent for all time to come; and I feel that nothing justifies the Court in carrying exemption one step beyond the limits which the law has provided. For these reasons I think that there is no valid ground of special appeal in the case before us, and that, as far as those grounds are concerned, the decision of the Court below ought to be affirmed. I think that, under the circumstances of this case, I should not say anything on the subject of costs.

Mitter, J.—I am extremely sorry to differ from my learned colleague. The Deputy Collector was wrong, in my opinion, in refusing to lay down an issue upon the point as to whether or not the tenure held by the defendants was protected from enhancement by the provisions of Section 3 of Act X of 1859. There are no such things as pleadings, technically so-called, required by that Act; and it is the duty of the Court itself to lay down all the issues essential to the right determination of the cause, the facts in dispute between the parties being previously ascertained by examining them or their duly authorized agents.* In the present case, however, it appears that the defendants had put in a written statement, and the third paragraph of this written statement distinctly raises the plea that their tenure was not liable to enhancement under the provisions of the law. It is true that the paragraph in question does not contain a specific statement to the effect that the tenure has been held at a uniform rate from the time of the Permanent Settlement; but such a statement is not absolutely necessary, as has been repeatedly held by this Court, in order to entitle a tenant to the benefit of Section 3 of the Act. The said paragraph, however, distinctly states that the tenure is a *kadimi* or ancient tenure, and the provisions of Section 4 and the various rulings of this Court upon that section are expressly set up as a bar to the enhancement sought for by the plaintiff. The words "long before twenty years" appear to have been used merely with reference to the provisions of Section 4; and it would be, in my opinion, altogether inconsistent with the entire context to hold that, by using those words, the defendants intended to say that their tenure had come into existence at a time subsequent to the date of the Permanent Settlement. The Deputy Collector says, "It is to be observed that the witness "Shabrat Ali states that the land was first brought "under cultivation by the defendants' father," and he wishes to infer therefrom that the tenure in question could not have been in existence at the time of the Permanent Settlement. But it is to be observed, in the first place, that it is highly unjust to deprive a party of the opportunity of

* See Sections 64 and 65, Act X of 1859.

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proving a particular point and then to draw unfavourable inferences against him with reference to that point, upon the isolated statement of one of the witnesses examined by him to prove the other points in the cause. Be this as it may, it is perfectly clear that the fact of the lands in dispute having been first brought under cultivation by the father of the defendants is by no means inconsistent with the existence of the tenure at the time of the Permanent Settlement. No pains appear to have been taken by the Deputy Collector to ascertain either from the defendants or from their witnesses as to when it was that the lands were first brought under cultivation by the defendants' father; and it is impossible to say that the period during which the tenure has been held by the defendants, when added to the period during which it was held by their father, may not be equal to the period that had elapsed between the Permanent Settlement and the institution of this suit.

It has been said that the point now raised before us was not urged in the memorandum of appeal filed by the defendants in the lower Appellate Court, the ground taken therein being that the defendants have succeeded in showing that their tenure had been held at a uniform rate for a period of twenty years next before the institution of the suit, and that the presumption arising from that fact in their favour had been no way rebutted by the plaintiff. This statement appears to be correct; but, under the circumstances mentioned above, I think that there has been no fair trial of this case by either of the Courts below. The lower Appellate Court does not appear to have passed any opinion even upon the point that was distinctly raised by the defendants in their memorandum of appeal. The defendants, it appears, had put in their rent receipts for more than twenty years prior to the date of suit, and they had, in their examination before the Deputy Collector, distinctly sworn that they were the receipts of their tenure. It cannot be, therefore, said that the plea taken by them before the Judge was altogether unsupported by the record; and, if the Judge had inquired into that plea, as he was bound to do, it is impossible to say what conclusion he would have arrived at with reference to it. Under these circumstances, I am of opinion that this case has not been properly tried, and that it ought to be, therefore, sent back to the Court of first instance to be tried with reference to the foregoing remarks.

The judgment of Jackson, J., as that of the senior Judge, prevailed.

On the 11th February 1869 a petition of appeal, under Section 15 of the Letters Patent, was filed by the defendant on the following grounds :—

First.—The Court has committed an error in holding that the defendants' allegation suggests a commencement of the holding at a much later period than the Permanent Settlement.

Second.—The Court should have held that the issue of holding from the time of the Permanent Settlement properly arose in this case from the written statement of the defendants and from their oral examination.

Third.—There is nothing in the defendants' statements to rebut, or destroy, or negative the presumption of a holding since the Permanent Settlement, and, therefore, the case should have been remanded.

Fourth.—It has not been found by the first Appellate Court that the productive powers of the land have increased at all from former years. The mere fact of repairing an "ahur" will not entitle the plaintiff to enhance, until it be proved and found that the expense incurred by the zemindar resulted in the increase of the productive powers, by proving actual increase.

On the same day the following order was passed thereon by

L. S. Jackson and Markby, J. J.—No good cause has been made out for allowing this appeal long after the lapse of thirty days. The judgment of both the Judges composing the Division Bench was given in open Court on the 25th November. The party thereupon had his right of appeal, and was bound to present that appeal within thirty days from that date, unless he could show good cause to the contrary. The application must be refused.

A second petition of appeal was presented on the 3rd April 1869, which was in the following terms :—

"That your petitioner was appellant in Special Appeal No. 1208 of 1868 against one Tulsi Ram Sahu and others.

"That the case was heard by a Division Bench of this Hon'ble Court on the 25th November 1868, consisting of Mr. Justice L. S. Jackson and Mr. Justice Mitter, and that there was a difference of opinion between the two learned Judges. The judgment was orally delivered.

"That the decision of Mr. Justice Mitter was in favour of your petitioner, and that of Mr. Justice Jackson against him.

"That the written decision of Mr. Justice Jackson was given in on the 25th January 1869.

"That your petitioner had filed his stamp paper for an attested copy of the judgments of the learned Judges on the 7th December 1868 with a view to file an appeal to the Court at large; and, as Mr. Justice Mitter's decision was not given in, he received attested copies on the 1st February 1869. That, in the meantime, constant applications were made to the officers of the Court for the copy.

"That, on the 11th February, an appeal petition having been drawn out on full stamp, was presented by your petitioner's pleader, Mr. C. Gregory, before Mr. Justice L. S. Jackson's Bench, because His Lordship was one of the Judges who decided the case, and the application was made to him for the admission of the appeal, under the impression that the word "Court" in the rules for admission of appeals to the Court at large was taken to mean any Division Bench.

"That your petitioner submits that the word 'Court' means the Court at large, of which the Hon'ble the Chief Justice is the President.

"That the decision given in on the 25th January 1869 should have been dated on that day, according to the rules laid down in Act VIII of 1859.

"That the order of Mr. Justice Jackson and Mr. Justice Markby is without jurisdiction, and ought not, therefore, to bind the Court of Appeal under Section 15 of the Charter Act.

"That the Court, as distinguished from a Divisional Bench of the Court, has the power to admit your petitioner's appeal.

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"That it is necessary by the rules laid down that the petition should contain the objections to the decision appealed against, stated, and mentioned, and it was thought prudent to obtain a copy of the judgment before an appeal to the Full Court was presented, in order that the objections may be well considered and stated.

"That the judgment of this Court, dated 25th November 1868, and the order of the 11th February, are herewith filed.

"Your petitioner, therefore, humbly prays that the said appeal put in by your petitioner on the 11th February 1869 be considered as in time, or that an order be made for the admission of the said appeal, and your petitioner, as in duty bound, will ever pray."

On the above petition the following order was passed on the 3rd April 1869:—

PEACOCK, C. J.—As a Division Bench we cannot interfere with the order of Mr. Justice S. Jackson and Mr. Justice Markby. According to my construction of the rule, the application ought to be made to the Appellate Court. The appellant is at liberty to apply to the Appellate Court when it sits. Let this motion be put on the list for the first day on which the Appellate Court sits, and let the pleader on the opposite side have notice.

The final order on the petition was as follows:—

PEACOCK, C. J., (concurred in by KEMP and MACPHERSON, J. J.)—We think that the appeal ought to be admitted. Referring to the first section of the Rules of the 5th August 1867, regarding the admission of appeals under Section 15 of the Letters Patent, to which Mr. Gregory has referred, we think that the words "unless the Court in its discretion, on good cause shown, shall grant further time," refer to the High Court, and not to the Division Bench. That being so, the High Court, for the hearing of an appeal of this nature, must consist of a Bench of at least three Judges. That is analogous with the practice laid down in Section 333, Act VIII of 1859, in which it is enacted that "appeals shall be made in the form "of a memorandum, which shall be presented in "the Appellate Court within the period herein-"after specified, unless the appellant shall show "sufficient cause to the satisfaction of the Appel-"late Court for not having presented it within "such limited period."

Upon the refusal of the Registrar to admit the appeal, on the ground of its having been presented beyond time, an application might have been made to the Chief Justice for the appointment of a Division Bench for the purpose of hearing it, as provided by Section 7 of the Rules of August 1867.

The case now comes before the Appellate Court, and it appears to me that the Court in its discretion ought to allow the appeal to be filed. On the Original Side of this Court it has been held that delay in obtaining office copies of the judgment in a case is no ground for postponing the filing of the memorandum of appeal, as the counsel should note the judgment on the brief. On that side of the Court, Judges do not always put in a written judgment; but on this side of the Court, where the first hearing is upon appeal, a written judgment is always put in, in order that it may be transmitted to the Court from which the appeal comes. That being the practice on this side of the Court, it appears to me that, if an appeal is presented within thirty days from the time at which a written judgment is put in, the applicant has a reasonable ground for applying to this Court in its discretion to admit it, even though filed after thirty days from the time when the judgment was delivered orally in Court. The appeal is admitted.

On a subsequent day the appeal was heard by Norman, Bayley, and Hobhouse, J. J.

Mr. G. Gregory, for the appellants, contended that the issue whether or not the defendants were entitled to claim the protection of Act X of 1859, Section 4, was sufficiently raised by the defendants in their written statement and their evidence. He referred to *Bhoyrubnauth Sandyal* v. *Mutty Mundle*,* *Jugmohun Dass* v. *Poornoo Chunder Roy*,† *Nyamut-oollah* v. *Gobind Chunder Dutt*,‡ *Gooroo Dass Mundle* v. *Sheikh Durbaree*,§ *Dhun Singh Roy* v. *Chunder Kant Mookerjee*,‖ *Poolin Beharee Sein* v. *Nemaye Chand*,¶ and *Koonwur Raj Coomar Roy* v. *Assa Beebee*.**

Baboo *Ramesh Chandra Mitter*, *contra*.—The defendants had not raised the plea that they were protected under Section 4, Act X of 1859, with sufficient distinctness.

NORMAN, J.—The question before us is whether the Deputy Collector was wrong in not fixing an issue upon the question whether the tenure held by the defendants is protected from enhancement by the provisions of Section 3, Act X of 1859. That is the way in which the question is stated by Mr. Justice Mitter, and in my opinion it is perfectly and correctly stated.

The right which, in a case like this, a ryot puts forward, is created by the third section of the Act. That section gives to ryots, who hold lands at rates of rent which have not been changed from the time of the Permanent Settlement, the right to receive pattas; or, in other words, to continue to hold at those rates. The issue, then, in a case like this, is "whether the ryot has held at rates which "have not been changed since the Permanent "Settlement." The affirmative of that issue rests on the party who asserts that he possesses that right. In my opinion, the Court is not bound, in any case, to raise or try an issue upon the existence of a right unless the party asserts the existence of such right, and claims to have his title tried.

Many cases have been cited by Mr. Gregory in the course of the argument. In considering the effect of these cases, it is necessary to observe that, in proceedings under Act X of 1859, the issue is raised on the statements of the parties on oath. It is impossible for anybody to speak from his own personal knowledge and observation as to the state of things which existed at the time of the Permanent Settlement. If, therefore, the party setting up a right to hold at fixed rates from the time of the Permanent Settlement alleges facts which show that he means to assert that, according to the best of his knowledge and belief, his rate of rent has not been changed from the Permanent Settlement, or from a time which he may reasonably believe was as remote as the Permanent Settlement, such an allegation is sufficient. The statement is made with as much certainty and positiveness as, looking at the subject with reference to which it is made and the restrictions under which

* W. R., 1864, Act X Rul., 100.
† 3 W. R., Act X Rul., 133.
‡ 4 W. R., Act X Rul., 25.
§ 5 W. R., Act X Rul., 86.
‖ 4 W. R., Act X Rul., 43.
¶ 7 W. R., 472.
** 3 W. R., Act X Rul., 170.

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the claimant is placed, the circumstances admit of. Thus, if a man who produced receipts extending over forty or forty-five years alleged that he and his ancestors had held at an unchanged rate for a very long time, and there was no inference that the assertion was not meant to imply that they held from a time as early as the Permanent Settlement, the Courts have treated that as an assertion that he and his ancestors had held at rates which had not been changed since the Permanent Settlement. That assertion was probably made as positively as it was in the power of the ryot to make it. I believe that not one of the cases cited is not capable of that explanation. But the present case is totally different. It is important to see what the claim here is. It is a claim to enhance the rent of the defendants' tenure, upon the ground that the plaintiff has provided means of irrigation of the land by which the productive powers of the land have increased. How is that claim met? It is met by a denial that the productive powers have increased. The defendant makes a further answer in a written statement put in before his examination; he says that "by a fixed hereditary holding "(the words used are *gujasta maurasi*) from "ancient times, more than twenty years, without "change or increase or decrease of rent, this land "has been held." That is the written statement. He does not say as far as he or his father remembered, but "from ancient times more than twenty years," and he does that in order to throw the burden of proof on the plaintiff. That statement was put in on the 4th November.

On the following day he was examined under Section 59, and the issue was fixed as provided by Section 65; the defendant on that occasion did not pretend to say that his predecessors had held at fixed rates from the time of the Permanent Settlement. Nothing of the kind appears to have been alluded to either by himself or his pleader. There is not one word on that point till his cross-examination by the plaintiff's pleader. In answer to that he says, "From the time of my father the "cultivation is *khilmi* (reclaimed) ancestral. From "the year 1262 (1855) the lands have been in my "possession, and I hold receipts for the payment "of rent. Since my jote has been *khilmi* jote, the "lands have been held at one single rate." When were his lands reclaimed? What was the time of his father since which the cultivation was *khilmi?* That was a fact entirely within his own knowledge, and yet no statement was then made which could lead to the inference that the land had been reclaimed, and that his father held the land as reclaimed, from the time of the Permanent Settlement. The case, then, goes to trial without objection on the part of the defendant, on the single issue whether the productive powers of the land had been increased.

The defendant endeavoured to show that his lands were less productive than formerly. What is the evidence as to that? Shabrat, his own witness, in his examination-in-chief, says that, when the cultivation was new in the time of the defendant's father, the production was five or seven maunds per biga, and now it is less. There is no doubt in my mind that the fact that the reclamation of the land by the defendant's father took place in recent times was within the knowledge of the parties present when the issues were fixed, and that no one pretended to say that the reclamation was as ancient as the Permanent Settlement.

I think that the rule ought to be steadily adhered to that, if a party does not assert a title in himself, the Courts ought not to be astute in picking out a title for him. It is a well-settled rule of law that a man cannot plead evidence, and Section 4 merely relates to evidence. It merely declares that "when, in any suit under "this Act, it shall be proved that the rent at "which land is held by a ryot has not been changed "for twenty years before the commencement of "the suit, it shall be presumed that the land has "been held at that rent from the Permanent "Settlement, unless the contrary be shown, or "unless it be proved that such rent was fixed at "some later period."

A man is not at liberty to say, "I have some "evidence" (evidence which is rebuttable) "that "the land was held at fixed rates from the time of "the Permanent Settlement."

Suppose a suit was brought on a bond, and the defendant, instead of saying that he had paid the amount secured by the bond, which would be a matter the truth of which would be within his own knowledge, were to say, "I produce this paper," purporting to be a receipt; "the plaintiff's name is signed on it." That would not be equivalent to saying he had paid the money; it would be no answer to the suit. The defendant would be asking the Court to draw an inference as to a fact, the existence of which he did not venture to assert. I think that the Deputy Collector came to a right conclusion, when he said that "the defendants "have not pleaded a right to hold at fixed rates, on "the ground of the rent having been unchanged "since the Permanent Settlement, but only that "their rent has been unchanged for more than "twenty years;" and that he was right in not trying the truth of an allegation which the defendants did not assert.

Under these circumstances I think that the decision of Mr. Justice Jackson, the senior Judge, is the correct one, and that it must be affirmed with costs.

HOBHOUSE, J.—The plaintiff, in the Court of first instance, sued the defendants, who are the special appellants before us, for arrears of rent upon their tenure for the year 1274 (1867).

The defendants put in a written statement, and one of them gave his deposition on oath in answer to the averment of the plaintiff, and the Court of first instance gave the plaintiff a decree for a certain amount of rent, and declined in the following words to entertain the particular issue, in the matter of which there is now a contention before us. The Court remarks, "As the defendants "have not pleaded a right to hold at fixed rates, on "the ground of the rent having been unchanged "since the date of the Permanent Settlement, but "only that their rent has been unchanged for "more than twenty years, no issue has been fixed "on this point. It is to be observed that their "witness Shabrat Ali states that the land was "first brought under cultivation by defendants' "father." The Court in these terms declined to go into the question as to whether the lands were held at rates which had remained unchanged from the time of the Permanent Settlement.

The case then came, after having passed through the lower Appellate Court, before a Division Bench

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of this Court, in special appeal; and, the senior Judge in that Division Bench having differed from the junior Judge upon the question as to whether any issue arose such as the first Court refused to entertain, his judgment became the judgment of the Court, and is now, under Section 15 of the Charter, in appeal before us.

Mr. Justice Mitter has considered that the question of unchanged rate, from the time of the Permanent Settlement, was raised upon the pleadings, and that the first Court was bound, therefore, to try and determine that question; and the learned Judge would, therefore, have remanded the case for trial of that issue. Mr. Justice Jackson, on the other hand, considered that the issue did not properly arise, and the material part of his judgment may, I think, be found in the following words :— "It is no doubt," the learned Judge remarks, "the duty of the Court to lay down the "proper issues; and, if it appeared that in this case "the issue of holding at unvaried rents from the "time of the Permanent Settlement properly arose, "it would be our duty to remand the case that "such issue might be framed and tried; but it "seems to me quite impossible, from the tenor of "the defendants' title and from their oral exami-"nation, to collect any such allegations as that "theirs was a holding which had commenced pre-"viously to the Permanent Settlement, and had "continued from that time to the present day at "unchanged rates." In these words the learned Judge seems to me to have considered that the issue did not properly arise, because it could not be collected from the tenor of the defendants' title and from their oral examination; and he goes on further to say that it could not be collected from certain evidence given on the part of the defendants to which he refers. The words on which Mr. Gregory, for the appellant, relies as raising the issue in question are thus stated in the written statement of the defendants. The defendants there state that the tenure is not liable to enhancement by reason of its being "a *gujasta maurasi* "tenure from ancient times, for more than twenty "years, without change or increase or decrease of "the rate at which this tenure has been held; "that the cultivation (jote) was ancestral, and has "remained, according to old custom, at one rate; "and, by reason of the tenure being *gujasta mau-"rasi*, the rent is not enhanceable, and the prayer "to enhance is opposed to the provisions of Sec-"tion 4, Act X of 1859." This, in my opinion, is, on the very face of it, a statement somewhat vague in terms; but still, in making that statement, the defendants do point to the provisions of Section 4, Act X of 1859, the terms of which section will be seen to comprehend a tenure which was in existence at the time of the Permanent Settlement; and, if this statement had stood alone and was all that we had to consider in this case, I should have been inclined to say that, having reference to the various precedents, *Bhoyrubnauth Sandyal* v. *Mutty Mundle*,* *Jugmohun Dass* v. *Poornoo Chunder Roy*,† *Nyamutoollah* v. *Gobind Chunder Dutt*,‡ *Dhun Singh Roy* v. *Chunder Kant Mookerjee*,§ *Gooroo Dass Mundle* v. *Sheikh Durbaree*,‖ *Poolin Beharee Sein* v. *Nemaye Chand*,¶ and *Koonwur Raj Coomar Roy* v. *Assa Beebee*,* on which Mr. Gregory has relied, there was some indication that the defendants had at one time intended to plead that they held a tenure of the nature contemplated by Section 4. But, whatever the defendants may have intended to plead when they first filed their written statement, I think it is quite clear, from the subsequent proceedings, that they abandoned, if ever they seriously attempted to put forth, any such case as that the tenure existed and was held at one rate of rent from the time of the Permanent Settlement. I observe that the written statement was put in on the 4th November. On the 5th November the defendant was examined, and I understand that in his examination-in-chief he confined himself merely to the statement that the lands had not been improved by the irrigation works put up by the plaintiff, and that no measurement of the lands had been made in his presence; and it was not until he was subjected to cross-examination that he made anything like even an allusion to the existence of his tenure at the time of the Permanent Settlement, and then what he said on that occasion was something very far short of what he had only the day before stated in his written paper. The words he used were these, "From the time of my father this cultivation is "*khilmi*, ancestral. In 1263 (1856) the lands "under cultivation were under my possession, and "I hold receipts for payment of the rents; and, "since my lands had been *khilmi* jote, from that "time one patta or rate has prevailed." This seems to me to be a considerable departure and resiling from the statement he made the day before on paper. Then, it seems to me, as pointed out by the pleader for the respondent, that, in accordance with the provisions of Section 65 of Act X of 1859, it is at any rate principally from the examination of parties that the issues which have to be decided under Act X are to be framed. I do not think that it can be said, as the pleader would have contended, that the written statement should not be taken into consideration at all, because, by the provisions of Section 59, such a statement is receivable in evidence; and it would be absurd to suppose that the legislature, while it provided that such written statements might be placed on the record, could have intended that such statements should not, when on the record, be taken into consideration. However, I think, with reference to the provisions of Section 65, that it was intended that the Revenue Courts, in framing issues, should more particularly look to the examination of the parties themselves. The issues in this case, framed after the examination of the parties, *i. e.*, of the defendants, on the 5th November 1867, was this :—Have the productive powers of the lands been increased by the *ahur*, which the plaintiff set up; and, if so, to what extent? This was the issue which, after the examination of the parties, and in their presence, the Revenue Court laid down, and to this issue the evidence on both sides was directed; and, beyond the vague statement to which I have referred as having been given by the defendant in his examination, there is nothing that has been shown to me which points to the trial of any issue other than that which has been already referred to. Neither is there anything on the record, in the way of protest, on the part of the defendants against

* W. R., 1864, Act X Rul., 100.
† 3 W. R., Act X Rul., 133.
‡ 4 W. R., Act X Rul., 25
§ 4 W. R., Act X Rul., 43.
‖ 5 W. R., Act X Rul., 86.
¶ 7 W. R., 472.

* 3 W. R., Act X Rul., 170.

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this issue, nor in the way of a request from them that any other issue, in addition to that stated, should be entertained and determined by the Court. The case upon the record was closed on the 27th November, and on the 28th November the Court gave judgment upon it. Then on that day, for the first time, there seems to have been something like a suggestion that the Court ought to have tried an issue as regards the existence of the tenure of the Permanent Settlement. This appears in the shape of a petition on the part of the defendant by his mooktear and not verified, the material part of which is couched in these terms, "Though my *gujasta* cultivation is from the time "of the Permanent Settlement, and documentary "evidence has been put in of twenty-nine years, yet, "by reason of its being entered in the written statement, 'more than twenty years,' and not the "words 'Permanent Settlement,' consideration or "issue in respect of the *gujasta* has not been fixed. "The fact is that, when the number of years is "not specified, then when I said 'more than "twenty years,' that is equivalent to having said "100 years, and the Permanent Settlement is in "1202 (1795)." Therefore, the petitioner concludes, by praying that the Judge do conduct, or cause to be conducted, a local investigation, and we may presume that it was a local investigation, amongst other matters, of the question of the existence of this tenure at the time of the Permanent Settlement. Upon this petition the Judge remarked that the case was closed; that he was about to give his decision, and, therefore, he rejected the prayer in the petition; and, thereafter in his judgment, the Judge gives that decision in the matter of this particular issue, which I have before quoted. It seems to me, upon this state of the evidence as it appears upon the record, that, if we may say that there was, in the first instance, something in the written statement of the defendant upon which the issue before us might have been founded, I think we cannot but say, upon examining his own deposition and those of his witnesses, and, upon looking to the conduct of the case on his part in the first Court, that he never did really intend to raise, and did not attempt to raise, until he had been defeated upon the real point, an issue upon the question of the existence of the tenure at the time of the Permanent Settlement; and I am confirmed in this opinion by observing that, when the defendants appealed to the lower Appellate Court, they did not say that an issue had not been framed and tried which ought to have been framed and tried, and did not demand a re-trial on such new issue; but they said that, upon the evidence on the record, this particular fact, in the matter of which they now come before us, had been established. It results from what I have said that I agree with the learned Judge whose decision has prevailed in this case, that the issue did not properly arise, though I do not agree altogether with every reason on which the learned Judge has supported his decision; and, though Mr. Gregory for the special appellant contends that it is not in this way that we are entitled to deal with the judgment now before us, yet I apprehend that the point before us, on which the learned Judges differed, is whether, upon the evidence on the record, the Judge of the first Court was right or wrong, whatever his reasons were, when he decided that this issue did not arise, and could not be decided by him; and I think that, upon this point the learned senior Judge is right when he says that the issue did not arise. I would, therefore, affirm his judgment, and dismiss this appeal with costs.

Bayley, J.—I regret very much to say that I differ from my learned colleagues in the view that I take of this case. I think that the judgment of Mr. Justice Mitter is right, and ought to be affirmed. At this late hour I will not enter into all the details and particulars that we have heard in the course of the argument, but will confine myself to two leading facts in the case which I consider material.

The plaintiff sued to enhance the rent of the defendants by reason of the greater productiveness of the soil, in consequence of certain irrigation works alleged to have been provided by the plaintiff.

The defendants denied that the productiveness in the soil had increased, and made the following written statement in answer to the plaintiff's claim in words which, for exact reference, I read from the Court's paper-book:—"The rate has continued "from long before twenty years, without alteration "or change, at old hereditary rate." Defendants then go on to state in the same written statement, "The former proprietors did not, by reason of the "old hereditary tenure, enhance the rent. Under "such circumstances, plaintiff's suit for enhancement of rent on the basis of the notice is in-"admissible under Section 4, Act X of 1859, and "various precedents."

After this written statement was put in, one of the defendants was examined. There the examination-in-chief refers only to the question of the productiveness of the soil. The Court asks the defendant no question as to whether defendant pleaded that his tenure was protected by reason of its existence from the time of the Permanent Settlement or not, but the plaintiff's vakeel asks him some questions to which the defendant answers in the terms given by Mr. Justice Hobhouse. He does not there specifically mention either Section 4, or that he held from the time of the Permanent Settlement, or from more than twenty years. He merely says that the lands are *khilmi* (re-claimed) lands of a hereditary nature, *maurasi*, and from his father's time.

Upon these statements of the defendants the Deputy Collector was of opinion that the plea of exemption from enhancement under the provisions of Sections 3 and 4, Act X of 1859, was not intended to be taken by the defendants, and, therefore, no issue was necessary to be fixed upon this point. I may as well here refer to a petition, dated the 27th November 1867, put in by the defendants, in which they very clearly stated that, by the use of words like "all along, more than twenty years" they meant to have the benefit of the presumption of Section 4, and that the use of the words "more than twenty years" was equivalent to naming 100 years, and the Permanent Settlement was within 73 years, in 1202 (1795). It is true that this petition seems to have been put in after the evidence had been taken, and when the Deputy Collector was about to pronounce his judgment; but yet I take it as an index to the nature and character of a plea of exemption under Sections 3 and 4, which the defendants really all along

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intended to set up against the plaintiff's claim. Under the provisions of Act X it is not absolutely necessary for a party to plead precisely in the very words of the sections, and it was for some time a question of doubt whether, to entitle a ryot to the benefit of Section 4, it was necessary for him expressly to refer the Permanent Settlement; but the whole current of decisions of our Court has now settled the point that it is not necessary for a ryot expressly to use the very words if he pleads substantially that he has held at one rate from the period of the Permanent Settlement; and, if he proves twenty years' holding at any uniform rate, that will suffice to raise the presumption that he held at one rate from the time of the Permanent Settlement; and it will be then for the other party to rebut the presumption by showing that the rent had varied at some period subsequent to the Permanent Settlement. Now, Section 59 of the Act seems to contemplate that the real facts are to be elicited by the Court from the examination of the parties, and also from the plaint and written statements. In the present case, however, it is clear that there was no examination of the defendant by the Court on the point as to whether the nature of his tenure was such as to bar the plaintiff's suit for enhancement with reference to Sections 3 and 4 of Act X of 1859. Now, from the words in the written statement of the defendants above cited by me, and also from their petition of the 27th November referred to above, it seems to be sufficiently clear that the defendants gave the Court to understand that their tenure had existence from a very long date, and invited an issue on the question whether it was liable to enhancement under the provisions of Sections 3 and 4. It is, however, contended that, when the Deputy Collector declined to raise an issue upon this question, this point was not made a subject of appeal before the lower Appellate Court. But I think that such a point was taken, though not very clearly, in the words where the defendants said that the lower Court was wrong in not allowing them the exemption they sought under the provisions of Section 4. Again, in the third ground of special appeal to this Court, we distinctly find that there was an objection by the defendants that the very issue should have been distinctly raised and tried. It is clear from the judgment of the Deputy Collector that he did not raise and try the issue simply because the defendants said that they held at one rate for more than twenty years instead of saying that they held from the time of the Permanent Settlement, which statement alone, it seems in his opinion, would have entitled the defendants to the benefit of Section 4. The Deputy Collector says, "As the defendants have not pleaded a "right to hold at fixed rents, on the ground of "the rent having been unchanged since the date "of the Permanent Settlement, but only that their "rent has been unchanged for more than twenty "years, no issue has been fixed on this point." As pointed out above, this view is clearly opposed to the whole current of decisions of this Court, which have invariably held that the naming of the Permanent Settlement is not absolutely necessary.

For these reasons I think the defendants in their written statement, and in the petition of 27th November, and in the whole tenor of their answer, gave sufficient means to the Court to raise the issue as to whether their tenure was protected under the provisions of Sections 3 and 4, Act X of 1859.

I concur, therefore, with Mr. Justice Mitter in holding that the Deputy Collector was wrong in not having raised and tried an issue upon that point.

I would accordingly reverse the judgment of the senior Judge, Mr. Justice Jackson, and remand the case to the first Court for determination of the issue above noticed.—*23rd February* 1870.—*Bengal Law Reports, Vol. V, Part XXIV.*

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Case.]

Regulation XI of 1825—*Diluviated land—Right of the original proprietor after reflux of the sea or river.*

Where A, the proprietor of an estate on the banks of the Ganges, lost it by the encroachment of the river which wholly washed away the culturable soil, and after the lapse of some years, the land became firm and cultivable as usual in consequence of the retiring of the water, the adjoining proprietor claimed it as if gained by gradual accession—

Held, *reversing the decision of the High Court at Calcutta, that the 4th section of Regulation XI of* 1825 *did not govern the case, and it should be governed by the general principles of equity.*

Held, *also, following the decision in* 4 *Moore's Indian Appeals, that the property now being capable of identification, it having been the property of A when it was submerged and never having been abandoned or derelict and having now emerged from the Ganges, is still the property of A.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Lopez *v.* Muddun Mohun Thakoor and others, from the High Court of Judicature at Fort William in Bengal, delivered 11th July 1870.

Present:

Sir James W. Colvile.
Sir Joseph Napier.
Lord Justice James.

Sir Lawrence Peel.

The plaintiff in this case, Felix Lopez, was the proprietor of a very considerable estate, a mouzah, on the banks of the Ganges. By the year 1840, by reason of the continued encroachment of that river, it was wholly submerged, and it was, to adopt an expression used in this class of cases in India, "diluviated;" that is, the surface soil, the culturable soil, was wholly washed away. After the lapse of some years, and after one temporary recession and re-encroachment which has occurred in the

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interval, the water has ultimately retired, and the land, having been for some time in a state described as admitting of only temporary cultivation by hand-sowing, has become hard and firm soil, capable of being cultivated in the usual manner. The plaintiff says, "This "was my property. The Ganges, which swal- "lowed it, has again yielded it up, and I claim "my property, which, having been buried and "lost to sight, has again re-appeared."

The rule of the English law applicable to this case, is thus expressed in a work of great authority, (Hale, 'De Jure Maris,' p. 15): "If a subject hath land adjoining the sea, and "the violence of the sea swallow it up, but so "yet that there be reasonable marks to con- "tinue the notice of it, or, though the marks "be defaced, yet, if by situation and extent of "quantity and boundary on the firm land, the "same can be known, or it be by art or "industry re-gained, the subject doth not lose "his property. If the marks remain or con- "tinue, or the extent can reasonably be certain, "the case is clear." And in another place, p. 17, he writes thus: "But if it be freely left "again by the reflux and recess of the sea, "the owner may have his land as before, for "he cannot lose his property of the soil, "although it for a time becomes part of the "sea, and within the Admiral's jurisdiction "while it so continues."

This principle is a principle not merely of English law, not a principle peculiar to any system of Municipal law, but it is a principle founded in universal law and justice, that is to say, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a volcano, or a field covered by the sea or by a river, the ground, the site, the property, remains in the original owner.

There is, however, another principle recognized in the English law (derived from the Civil law,) which is this,—that where there is an acquisition of land from the sea or a river by *gradual, slow, and imperceptible means*, there, from the supposed necessity of the case, and the difficulty of having to determine, year by year, to whom an inch, or a foot, or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining land, (Lord Yarborough's case, 2 Bligh, N. S., 147). And the converse of that rule was, in the year 1839 held by the English Courts to apply to the case of a similar wearing away of the banks of a navigable river, so that there the owner of the river gained from the land in the same way as the owner of the land had in the former case gained from the sea, (the Hull and Selby Railway case, 5 Meeson and Welsby, 327). To what extent that rule would be carried in this country, if there were existing certain means of identifying the original bounds of the property, by landmarks, by maps, or by a mine under the sea, or other means of that kind, has never been judicially determined.

This principle of law, so far as relates to accretion, has, to some extent, been made part of the positive written law of India, and it is on the operation of such positive written law that the defendants' case is based. This law is to be found in Regulation No. XI of 1825, a Regulation for carrying out the rules to be observed on the determining of claims to lands gained by alluvion, or by the dereliction of a river or the sea. There is a recital in that Regulation as to disputes which had arisen with regard to such claims, and the necessity of having some definite rule laid down with regard to several matters, only one of which is material or relevant to the present case, and that is the case provided for by the 4th section of the Regulation. By that section it is provided that, "when land may be gained by "gradual accession, whether from the recess "of a river or of the sea, it shall be considered "an increment to the tenure of the person to "whose land or estate it is thus annexed, "whether the land be held immediately from "the Government, or from any intermediate "land-owner." And the defendants' contention is that, the plaintiff's land having been wholly submerged, so as to make their (the defendants') land the river boundary, the subsequent recession of the river has caused a gradual accession to their land, and an increment by annexation to their estate, notwithstanding that the land has been re-formed on the ascertainable and ascertained site of the plaintiff's mouzah.

It is to be observed, however, that that clause refers simply to cases of gain of acquisition by means of gradual accession. There are no words which imply the confiscation or destruction, of any private person's property whatever. If a Regulation is to be construed as taking away anybody's property, that intention to take away ought to be expressed in very plain words, or be made out by very plain and necessary implication. The plaintiff here says, "I had "the property. It was my property before it "was covered by the Ganges. It remained my "property after it was submerged by the "Ganges. There was nothing in that state of "things that took it from me and gave it to "the Government. When it emerged, there "was nothing that took it from me and gave "it to any other person." And, in answer to such a claim, it would certainly seem that something more than mere reference to the acquisition of land by increment, by alluvion, or by what other term may be used, would be required in order to enable the owner of one property to take property which had been legally vested in another.

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In truth, when the whole words are looked at, not merely of that clause, but of the whole Regulation, it is quite obvious that what the then legislative authority was dealing with, was the gain which an individual proprietor might make in this way from that which was part of the public territory, the public domain not usable in the ordinary sense, that is to say, the sea belonging to the State, a public river belonging to the State; this was a gift to an individual whose estate lay upon the river or lay upon the sea, a gift to him of that which, by accretion, became valuable and usable out of that which was in a state of nature neither valuable nor usable.

And on the very words of the section itself, if the ownership of the submerged site remained as it was, (and there seems nothing to take it away,) it is difficult to see why a deposit of alluvion directly upon it is not at least as much an accretion and annexation vertically to the site as it would be an accretion and annexation longitudinally to the river frontage of the adjoining property.

If we had then to consider the question for the first time, we should have come to the conclusion that the 4th section did not govern the case, and that the question would have to be determined by the general principles of Equity, to which all cases not in terms provided for are referred by the 11th section. Those principles would not give the plaintiff's property to the defendant. But the question is not raised for the first time. The very point came for consideration in India before a Court comprising Sir Barnes Peacock, Mr. Justice Bayley, and Mr. Justice Kemp; and, after full consideration, it was decided that lands washed away and afterwards re-formed on an old site, which could be clearly recognized, are not lands gained within the meaning of Section 4, Regulation XI of 1825, namely, they do not become the property of the adjoining owner, but remain the property of the original owner.

And the same point arose in a case in this Court of Mussamut Imam Bandi and Wajid Ali Khan, appellants, and Thurgovind Ghose, respondent, reported in 4 Moore's Indian Appeals. It is there said, "The whole of "the district adjoining the land in dispute, "as well as that land itself, is flat, and very "liable to be covered or washed away by the "waters of the Ganges, which river frequently "changes its channel. The land in dispute "was inundated about the year 1787; it "remained covered with water till about 1801, "and then became partly dry, until, in the "year 1814, it was again inundated. After "this period it once again re-appeared above "the surface of the water, and by the year "1820 it became very valuable land." That is a state of things very singularly like what has occurred in this case.

In that case it was held as follows: "The "question, then, is, to whom did this land belong "before the inundation? Whoever was the "owner then remained the owner while it "was covered with water and after it became "dry."

This authority appears to their lordships conclusive in the present case.

In a subsequent case, however, (*Kattemonee Dossee* v. *Ranee Moumohinee Dubee*, '*Weekly Reporter*,' *26th May*, 1865,) it was held by a Court comprising Justices Trevor, Loch, Bayley, and Morgan, that all gradual accessions from the recess of a river or the sea are an increment to the estate to which they are annexed without regard to the site of the increment, and a distinction was taken between the two cases; and it seems to have been considered that the former case did not apply to any case where the property was to be considered as wholly lost and absorbed, and no part of the surface remained capable of identification, where there was a complete diluviation of the usable land and nothing but a useless site left at the bottom of the river. Their lordships, however, are unable to assent to any such distinction between surface and site. The site is the property, and the law knows no difference between a site covered by water and a site covered by crops, provided the ownership of the site be ascertained.

Their lordships, however, desire it to be understood that they do not hold that property absorbed by a sea or a river is, under all circumstances, and after any lapse of time, to be recovered by the old owner. It may well be that it may have been so completely abandoned as to merge again, like any other derelict land, into the public domain, as part of the sea or river of the State, and so liable to the written law as to accretion and annexation.

But in this case not only did the parties themselves take the proper, prudent, and honest means of preventing the necessity of any dispute arising by interchanging the Tanabundee which has been put in evidence, but the plaintiff, as between him and the State, did also take the most effectual means in his power (having the description and measurement of the submerged mouzah recorded, and continuing to pay rent for it) to prevent the possibility of any question of dereliction or abandonment being raised against him. Their lordships are, therefore, of opinion that the property now being capable of identification by means of that Tanabundee and otherwise, the property having been the property of the plaintiff when it was submerged, never having been abandoned or derelict, having now emerged from the Ganges, is still his property; and they will, therefore, recommend to Her Majesty to reverse the decision of the Court from which

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the appeal has come, to affirm the decision of the Principal Sudr Ameen, and that the costs of the litigation both below and here should be given to the appellant, the plaintiff.

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

SCOTT, GREENWAY, AND STRATTON, J. J.

Regulation XXX of 1802—*Refusal by landlord to grant puttah—Right to claim a puttah for a fixed money rent.*

Where A, a Mirassidar, sued B, a Zemindar, to recover possession of lands which he claimed a right to cultivate, of which he was deprived by B, to recover damages sustained in consequence of such dispossession and to compel B to grant a puttah; the Zillah Court decreed possession and damages, and the granting of a puttah for a fixed money rent; and the Provincial Court, on appeal, confirmed the decree as to giving possession and granting at an annual fixed rent, but modified the decree as to damages—

HELD *by the Sudr Court, modifying the decree of the lower Courts, that, though A was entitled to possession of the lands, he was not entitled to receive a puttah for a fixed money rent, and that A was entitled to hold possession of the disputed lands on a puttah defining the rate of division of the produce, which rate was to be determined as prescribed by Section* 9, *Regulation XXX of* 1802.

No. 15 *of* 1812.

—— Zemindar of Ponary *v.* Ramasawmy Iyer.

RAMASAWMY IYER sued the Zemindar of Ponary, in the Zillah Court of Chingleput, to recover possession of forty-five cawnies of nunjah arable land, which he claimed a right to cultivate, under a mirassi tenure, of which he had been deprived, by the said Zemindar. Ramasawmy Iyer further sued him to recover damages sustained by him in consequence of his being dispossessed of the lands in question, and to compel the said Zemindar to grant him a lease or puttah for the said lands under the provisions of Section 9, Regulation XXX of 1802; a puttah having been altogether refused to him by the said Zemindar. The Zillah Court adjudged that Ramasawmy Iyer should recover possession of the lands sued for; that the Zemindar should, under the provisions of Section 9, Regulation XXX of 1802, grant a puttah for the lands in question, at the rate of Pagodas 60-6-16, the beriz fixed by the curnum; and that the said Zemindar should be liable for the sum of Pagodas 74 as damages, together with all costs of suit.

The Zemindar appealed therefrom to the Provincial Court for the Centre Division, who adjudged that Ramasawmy Iyer was entitled to recover possession of the lands in question, and to receive a puttah for them from the Zemindar; that the puttah should be for a money rent, agreeably to the decree of the Zillah Judge, at an annual fixed beriz of Star Pagodas 60-6-16; which amount, it was stated to have been proved, was assessed on the lands in question, and was paid by the respondent to the Government, for them, in the year Roudy; and that the Zemindar should pay damages Star Pagodas 55—with Star Pagodas 6-11 interest thereon, and the further sum of Pagodas 55, for damages on account of Fusly 1219, together with costs.

From this decree the Zemindar prayed the Court of Sudr Udalut to admit a special appeal; and the Court, seeing reasons to doubt the correctness of the grounds, upon which the Provincial Court had determined the question, concerning the rate of assessment to be fixed on the lands, and the kind of puttah which Ramasawmy Iyer was adjudged to be entitled to demand from the Zemindar, admitted a special appeal.

In this case, the questions for decision were simply, whether the Zemindar offered to the respondent, a legal puttah, in the mode required by the provisions of Regulation XXX of 1802, and became, by the respondent's refusal to take such puttah, entitled to grant his lands to other persons; or, whether the Zemindar, by refusing to grant a puttah, as required by Section 14, Regulation XXV of 1802, had rendered himself liable to be sued for damages.

That the respondent made several tenders, for the rents of the lands in question, was satisfactorily established. His proposals were perfectly distinct, and it was for the appellant, if he thought proper, to reject either, or all the terms offered; but it was at the same time incumbent upon him to tender to the respondent a puttah containing such terms, as he, the appellant, might consider to be reasonable. No evidence whatever was produced to show that he made such tender; and he, therefore, rendered himself liable to all the consequences of refusing to grant a puttah.

The Zillah and Provincial Courts erred, in declaring the respondent entitled to receive from the appellant, a puttah for a money rent, at an annual fixed beriz of Star Pagodas 60-6-16. There was not a tittle of evidence to show that any such right existed on the part of the respondent. On the contrary, all the evidence taken regarding the assessment of the lands showed that it was not fixed, but derived from a division of the produce, which must fluctuate with the seasons, and the commutation price of which must be influenced by its plenty or scarcity.

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It was not for the Courts to interfere in determining the rate at which, the rate in grain, shall be commuted for a payment in money. This was a point clearly left to be settled by the parties themselves; and, in adjusting the rate, each party would consult his own interest—the Zemindar, in avoiding the expense, risk, and trouble of ascertaining, receiving, keeping, and disposing of his share of the grain; and the cultivator, in endeavouring to secure a reasonable profit for the expense, risk, and trouble, from which he relieves the Zemindar. When the rate shall be settled by a written agreement, the Courts may be called upon to enforce it.

In the present case, it was clear that a fixed beriz of Star Pagodas 60-6-16, for the forty-five cawnies of land, would not be equitable; for Ramasawmy Iyer himself offered a rent of Pagodas 81 for the same land. To fix the rent at the former amount, therefore, would be to punish the Zemindar, by a permanent diminution of his property; while all that could, in justice, be required of him, was a compensation to the respondent, for the loss which he sustained.

The Court, therefore, confirmed that part of the Provincial Court's decree, which adjudged to the respondent, the right to hold possession of the lands in question; and set aside that part of the said decree, which declared the respondent entitled to receive from the appellant, a puttah for a money rent at an annual fixed beriz of Star Pagodas 60-6-16.

It was, therefore, adjudged that, the respondent, was entitled to hold possession of the forty-five cawnies of land in question, on a puttah, defining the rate of division of the produce; which rate, as prescribed by Section 9, Regulation XXX of 1802, was to be determined, according to the rates prevailing, in the year preceding the assessment of the permanent jumma, on those lands; or, if those rates were not ascertainable, according to the rates established for lands of the same description and quality.

And that no dispute might hereafter arise regarding the rates of division of the produce of the lands in question, the Court adjudged that the said rates should be determined by the Zillah Judge of Chingleput, who should take the evidence of the Curnum in open Court, before the parties or their vakeels, and that he should certify the same under his official seal and signature at the foot of the copy of the decree sent to be executed, and at the foot of the copy given to each party.

The Court, unable to discover the grounds upon which the Provincial Court considered the damages awarded by the Zillah Judge to be too great, reversed that part of their decree which related to the damages in question, and adjudged that the appellant should pay to the respondent damages, at the rate of Pagodas 74 per annum, as decreed by the Zillah Judge, for the time during which the said respondent was kept out of possession of the lands in question; subject, however, to such deduction as might appear equitable for the difference between the amount of Pagodas 60-6-16, which the respondent was understood to have paid annually under the decree of the Provincial Court, from the time of its being carried into execution, and the amount due to the said appellant, upon an examination of the Curnum's accounts according to the principles here declared.

And the Court further ordered that each party should pay his own costs in this Court.

SCOTT, GREENWAY, AND STRATTON, J. J.

Right of a Zemindar to exact payment of money or tax.

Where A, a firewood merchant, brought a suit againt B, a Zemindar, to establish his right to cut firewood in the jungles within the zemindary, the Zillah and Provincial Courts decreed in favour of A—

HELD, *confirming the decrees of the lower Courts, that B was only entitled to exercise the rights which the Government had been exercising before the permanent settlement; and that, as there was no proof of the Government having, before the permanent settlement, exacted any payment for cutting firewood, B was not competent to do so.*

No. 10 *of* 1814.

THIS suit was instituted in the Zillah Court of Masulipatam against the Zemindar of Devee, to establish a claim set up by the plaintiffs, (firewood merchants of Masulipatam,) to the privilege of cutting firewood in the jungles of Devee, without paying any consideration to the Zemindar; and also, to recover the sum levied, on this account, by the Zemindar, together with damages. The Zillah Court adjudged to the plaintiffs the privilege claimed by them and 1 rupee damages, each party paying their costs respectively.

On the Zemindar appealing to the Provincial Court for the Northern Division, they confirmed the decision of the Zillah Court, except that part of it which awarded damages to the plaintiffs.

The Zemindar dying, his brother and heir appealed to the Court of Sudr Udalut, who observed that the Zemindar contended that the decrees of the lower Courts infringed the rights vested in him by the *sunnud-i-milkeut-i-istimrar* and by the Regulations of the Government; and, in support of the claim advanced by him, he cited the instance of a Zemindar, in the vicinity of St. Thomas' Mount, who demanded a fanam for each cartload of gravel taken from his estate, which demand was complied

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with, even by the Government itself; although it had never been made before the introduction of the Permanent Assessment. The appellant further cited a decree of the Zillah Court of Rajahmundry.

It was properly remarked by the Zillah Judge, that a decree of the Court of Rajahmundry was not a standard, by which he was bound to regulate his judgment; and that the case cited by the appellant, of the demand made by a Zemindar, in the neighbourhood of St. Thomas' Mount, had not been litigated. If, therefore, the circumstances of the case above mentioned, had been before the Court, they could have exhibited nothing more than a compromise between the parties, which it was clear, could not afford any guide to the Courts in the decision of the present question.

The determination of the present question rested upon very simple grounds; and must follow the usage which prevailed before the introduction of the Permanent Assessment. By the Act of Permanent Settlement, the Government transferred to Zemindars, (with certain specified exceptions,) the proprietary right exercised by itself. It could not do more, without infringing the rights of others. All usages which are not specially abrogated by the Regulations, must be held to be confirmed; and if, previously to the introduction of the Permanent Assessment, no payment was exacted by the Government, for firewood cut in the jungles of Devee, none can be exacted by the Zemindar. But, it was not pretended that the Government made an exaction of this nature, and, therefore, the Zemindar was not entitled to make one.

The Court, therefore, dismissed the appeal, and, confirming the decree of the Provincial Court, directed the appellant to pay all costs.

Scott and Greenway, J. J.

Regulation XXVIII of 1802—*Non-payment of rent by a lessee—Right of a Zemindar to resume in case of default.*

Where A, a lessee of B, a Zemindar, brought a suit to recover damages for resumption of the village leased to A, on the ground of non-payment of rent, it appeared that B did not attempt to realize the arrears either by distraint of A's personal property or arresting the person of A, before resuming the village; but A did not show that he had any personal property from which B could have realized the money—

Held, *reversing the decision of the Provincial Court, that the attachment by B was justifiable under the circumstances, and that A was not entitled to any indemnification for being ousted from his farm.*

No. 15 *of* 1814.

This suit was instituted in the Zillah Court of Masulipatam, against the Zemindar of Charmahal, for the recovery of the sum of Madras Pagodas 1,03,100, on account of the Zemindar's resumption of the lease of the Charmahal District from the defendant, for eight years, from Fusly 1213 to Fusly 1220 inclusive.

The Zillah Court adjudged that the plaintiff, having failed to fulfil his engagements with the defendant, had, by such failure, forfeited his rent, and the defendant had, therefore, a right to resume the district. The plaintiff's claim to restoration of the rent, or to any indemnification for its resumption, was accordingly disallowed, as altogether groundless. The Zillah Court also disallowed the sum of Pagodas 10,300, claimed under Section 14, Regulation XXX of 1802, on account of the defendant's refusal to grant receipts, for monies paid by the plaintiff; and of the sum of 8,100 pagodas claimed by the plaintiff, as having been paid to the defendant, over and above the stipulated manoovurty. But the Zillah Court, after a minute examination of the accounts of the parties, adjudged the defendant to pay to the plaintiff the sum of Pagodas 6,300-8-11. The Zillah Court further adjudged interest on the sum above mentioned, at the rate of twelve per cent. per annum, from the date of the plaint in the Zillah Court to the date of the decree; and the reason assigned was that it was difficult to fix any other date for the commencement of interest. On appeal, the Provincial Court adjudged the Zemindar to pay Pagodas 16,827-9-9, as an indemnification for withholding the rent, for the term which it had to run, six years; and, in the adjustment of accounts, they allowed him credit for Pagodas 3,450, making, with interest, a total of Pagodas 21,215-10-6, payable by the said Zemindar.

From this decision, the Zemindar appealed to the Sudr Court. Regulation XXVIII of 1802 prescribes the course to be pursued, for the realization of arrears of rent or revenue, due to Zemindars, by dependent Talookdar and under-tenants, of other descriptions. The course prescribed is briefly as follows. In cases wherein an arrear cannot be realized, by distraining the personal property of the defaulter or his sureties, the Zemindar has the power of causing the immediate arrest of the defaulter's person; and, if the arrear be not immediately discharged, the Zemindar has authority to attach the farm or other tenure of the defaulter, and to manage it by his, the Zemindar's, own agents, until the rent due, and the further rent which may become due after the attachment, with interest thereon, shall be liquidated. If the defaulter make good the arrear, with interest, at any time within the current year, the attachment is to be withdrawn; and an account rendered of the receipts and disbursements, during the continuance of such attachment. When arrears are not liquidated within the current year, the Zemindar has power to

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make, at the commencement of the ensuing year, such provision for the receipt of the rents, from the lands tenanted by the defaulter, as he may judge proper, consistently with the rights of the other persons concerned; and, when the defaulter may be a lease-holder, or other tenant, having right of occupancy only, during payment of certain rents, without right of property or possession, the Zemindar is at liberty to oust the defaulting tenant, from the tenure; and, in this case, he has authority to act, without application to a Court of Justice.

In the case under consideration, the original defendant did not follow the course prescribed. He omitted altogether the preliminary steps of distraint and sale of the personal property, and of the person of the defaulter, and proceeded, at once, to attach the farm. And the plaintiff, considering this attachment as an actual and final resumption of the farm immediately instituted this suit, for the recovery of damages, sustained by him, in consequence of such resumption, together with other claims.

If the plaintiff had, in the first instance, limited his suit to a claim for damages, against the Zemindar, for the irregular attachment of the farm, he must, as a matter of course, have been immediately re-placed in possession of it, on paying up the arrears, which might then be claimed, as due, by the Collector, and he might at his leisure have sued the Zemindar for the recovery of his other claims. This mode of proceeding would have been simple, and unattended with any difficulty, in the decision of the matters at issue, between the parties. But the course pursued by the plaintiff had an inevitable tendency, and had, in fact, operated to prolong the grievance, for which he sought, and might have obtained, immediate redress.

Whether the attachment took place on the 10th December 1805, as averred by the plaintiff, or whether it took place on the 14th December, as averred by the defendant, it was clear that a part of the October and the whole of the November kists were then due. It was obvious, therefore, that the plaintiff, by omitting to discharge these arrears, had rendered his farm liable to ultimate attachment. The defendant pleaded the utter insufficiency of the plaintiff's personal property, to make good the arrear, as his reason for proceeding, at once, to attachment; and, as there was abundant evidence, in the record, to show that considerable portions of the zemindary had been repeatedly attached, by the Collector, on account of failures in the regular discharge of the kists, it must be admitted, that the defendant had some reason to apprehend that his possession of the zemindary was endangered by the plaintiff's remissness. The defendant's attachment of the farm, in the first instance, was no doubt irregular; but the plaintiff had failed to show that he was in possession of personal property sufficient to make good the arrear, and the defendant's omission to arrest his person previously to the attachment, was a deviation from the prescribed course, which, though irregular, could not be considered as having subjected the plaintiff to any loss. The plaintiff had still the option of discharging the arrear, when the attachment must have been withdrawn. His ability to discharge the arrear could not possibly be diminished by the defendant's omission of the previous form of arrest; and he had no right to presume, as he did presume, that the attachment of the farm was intended as a final resumption.

The plaintiff's allegation that, at the time when the attachment was made, the defendant had received more than he was entitled to receive from him, would, in this case, avail him nothing. By the terms of the engagement, he was bound to discharge the kists, direct to the Collector, as well as to pay certain sums to the Zemindar. His payments, on these two accounts, therefore, formed separate and distinct questions. He could not be allowed to claim his surplus payments to one, as a set-off against the balance, due to the other; except in a final adjustment of accounts, at the expiration of the lease.

In this view of the case, therefore, the Court were of opinion, that the plaintiff's failure, in the payment of the kists, to the Collector, rendered his farm liable to attachment; and that the attachment, though irregular in the mode in which it was made, was, on the whole, justifiable.

The next point for consideration was, whether the defendant was justified, in proceeding to oust the plaintiff, from his tenure. Although the recovery of the farm was one of the ostensible objects of the suit, it did not appear that the plaintiff ever offered to discharge the arrears of revenue, which were outstanding, against the zemindary. He rested his claim, to re-possession, solely on the ground, that on an adjustment of accounts, between him and the Zemindar, the balance would be found considerably in his favour. This would have been a good plea, if, by the terms of engagement, the sums which he paid to the Zemindar could be considered as payments on account of the Government revenue. But, as stated before, the plaintiff was bound to pay the Government revenue, direct to the Collector, according to the established kists; and his payments, to the Zemindar, were, altogether, on a separate account. It would have been a good plea, also, if the Zemindar had attached the farm, on the grounds of an alleged failure, on the part of the plaintiff, to make him certain payments to which he was bound, by the terms of his agreement. But the case was altogether different; and he could only be entitled to restitution, by discharging, or offering to discharge,

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the outstanding demands of the Collector, of the zemindary, before the expiration of the fusly. As he failed to do this, the Court were of opinion, that the defendant was entitled to oust him from his farm.

On these grounds, the Court did not consider the plaintiff to be entitled to any indemnification, for being ousted from his farm; and they accordingly set aside so much of the Provincial Court's decree, as awarded to the plaintiff, the sum of Pagodas 16,827-9-9, on this account.

With respect to the claim for Pagodas 10,000, the estimated profit, of which the plaintiff alleged he was deprived, by the authorized interference, of the defendant, between him and the ryots, and the claim for the Pagodas 13,000, on account of the defendant's refusal to grant receipts, for monies paid by the plaintiff, the Court entirely concurred in the judgment of the lower Courts, by which those claims were rejected.

With regard to the remaining claim of Pagodas 8,100, the amount stated to have been paid to, or on account of, the defendant, in Fuslies 1213, 1214, and 1215, over and above the sum stipulated as manoovurty, the Court observed that, in the adjustment of accounts, between the parties, the Zillah Court had considered the lease as having terminated with Fusly 1214. There was no doubt, that, under the provisions of Regulation XXVIII of 1802, the plaintiff was entitled to the benefit of the lease, for the Fusly 1215, until the expiration of which, he could not finally be ousted. In this respect, therefore, the adjustment of accounts was defective; but the evidence in the record did not enable the Court to remedy the defect, there being no account of the actual receipts and disbursements in Fusly 1215, after the farm had been attached, by the Zemindar.

The Provincial Court were, therefore, directed to proceed to an adjustment of the accounts of the lease, for Fusly 1215, by calling upon the respondent for a statement, of the receipts and disbursements, in the zemindary, previous to the attachment; and, upon the appellant for a statement, of the receipts and disbursements, subsequent to the attachment, up to the end of the said fusly; and, after duly investigating these accounts, and having adjusted them, to cause the appellant, or the respondent, to pay such sums as might appear to be due, by the one to the other, certifying such adjustment, for the information of this Court.

SEASON REPORT.

REMARKS ON THE SEASON.

Northern Section.—The rainfall was scanty and inadequate for purposes of cultivation.

Ganjam.—In parts of Ganjam *paddy* and *gingelly* were sown, and the standing *sugarcane* and *cotton* crops were in good condition. In the Berhampore and Chicacole Taluks *summer gingelly* was harvested, but yielded only half a crop.

Vizagapatam.—In Vizagapatam *sugarcane* was largely cultivated; *cotton* and *gingelly* also were sown, but not so extensively as *sugarcane.*

Godavery.—The wells dug in the sub-division of the Godavery District were highly beneficial, and early rains were expected from the state of the weather. Slight freshes passed down the Yeleru, and supplies were received in most of the tanks dependent thereon; but, on the whole, the inconvenience from the want of rain had not abated, and in the upland taluks of the district considerable difficulty was experienced from the scarcity of pasture and water. All the canals, with the exception of the Ellore and part of the Narsapur Channel, were closed, and cultivation was confined to the formation of seed-beds and the ploughing of dry fields in a few favoured localities. *Summer paddy, lamp-oil seed,* and *cotton* were harvested, and the latter, too, yielded a good out-turn.

Kistna.—In Kistna the *castor-oil* and *indigo* crops sown last year were being harvested.

Nellore.—In Nellore, *nallavari* and *kasavari* were harvested, and *indigo, salupu jonna,* and *yerra jonna* were sown.

Prices rose in Nellore and Vizagapatam. In Ganjam and Kistna they were almost stationary, and in Godavery they fell slightly.

Cholera broke out twice in the Godavery District, and, though not of a virulent type, was generally prevalent. In the other districts there was no cholera; but public health, except in Ganjam, suffered more or less from small-pox and fever.

There was no cattle disease in Ganjam. Its general prevalence was reported from all the other districts.

Ceded Districts.—There was a general fall of rain, but not such as to add materially to the supplies in tanks.

Cuddapah.—There was no actual cultivation during the month in Cuddapah, and agricultural operations were restricted to the preparation of land for the *mungary* or early cultivation. Standing crops were tolerably good with a few exceptions. *Paddy, indigo,* and *cholum* were harvested over a limited area, but with indifferent results.

Bellary.—Ryots began cultivation in Bellary, but not so extensively as would have been the case if the rainfall had been heavier.

Kurnool.—In the Nundial and Cumbum Taluks of the Kurnool District *sugarcane* was planted, and in Ramalkotta second *crop paddy* was cut.

The price of *cotton* doubled, while that of the staple grains exhibited a slight fall in Cuddapah.

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In the other two districts prices remained almost stationary.

Public health was good in Bellary. It suffered from small-pox and fever in Kurnool, and from cholera also to a small extent in Cuddapah. In the last-named district cholera pills were administered with some success.

Cattle suffered from disease over the greater portion of this section.

East Centre.—The rains were general, though scanty, in North and South Arcot. In Madras there was no rain, with the exception of a slight fall in the town of Conjeveram.

Madras.—In Madras the absence of timely rains impeded progress in cultivation, and the standing *navarai* crops were withering from drought all over the district.

North Arcot.—In the Wandewash Taluk, of the North Arcot District, there was no cultivation. In the other taluks some progress was made under wells and river and channel springs. *Nunjah* crops were withering from insufficiency of water in the Chittoor, Gudiattum, Polur, and Wandewash Taluks, but elsewhere doing tolerably well. *Gingelly-seed, chilly, raggy,* and *navarai paddy* were harvested, but none of them yielded more than a three-quarter crop.

South Arcot.—In South Arcot, lands within the reach of well-irrigation were sown with *car paddy*; and *tobacco, indigo,* and *gingelly-seeds* were harvested. Over the greater part of the district both men and cattle experienced considerable difficulty from the insufficiency of water for drinking purposes.

Prices slightly fluctuated in Madras and South Arcot, and remained almost stationary in North Arcot.

Cholera prevailed in all the districts of this section. It was least virulent in South Arcot. There was also some fever, but not of a malignant type.

Cattle were free from disease in Madras, but suffered severely in the other two districts.

CAUVERY.—There was a very slight fall of rain, and freshes had only just commenced to pass down the Cauvery and Coleroon.

Tanjore.—*Gingelly-oil seed* and *chillies* were cultivated in some parts of the Tanjore District. Tanks were for the most part dry.

Trichinopoly.—In Trichinopoly, *valan paddy* was reaped, but no commencement had as yet been made in the preparation of the soil for fresh cultivation.

Prices remained the same as in the preceding month.

There was no cholera, and public health was, on the whole, good.

Cattle disease was reported to exist in parts of the Tanjore District.

SOUTHERN SECTION.—Slight showers fell in this section.

Madura.—The river Vigay, in Madura, received o freshes; tanks in many places were quite dry, and the standing *nunjah* crops were drooping for want of water. A few of the dry grains and *cotton* and *indigo* were, notwithstanding, cultivated in parts of the district.

Tinnevelly.—Cultivation was very much retarded in Tinnevelly owing to the inadequacy of the water-supply for irrigation. A severe storm passed over the Sattur Taluk on the 22nd of the month, and caused damage to houses, avenue trees, &c.

There was a slight fall in prices in Tinnevelly. In the other districts they were stationary.

Cholera was prevalent, but it was not of a virulent type.

Cattle preserved good health, but suffered severely from want of pasture and water in parts of Madura.

WEST CENTRE.—The rains that fell in Coimbatore and Salem were scanty and unequally distributed.

Coimbatore.—In parts of the Coimbatore District, where the rains were sufficiently heavy, lands were ploughed, *cumboo* and *raggy* were sown, and in some of the garden lands *chilly* and *raggy* plants were transplanted. Water in wells was diminishing, and *plantains, betel vines,* and *sugarcane* under the Noyel River were drooping.

Neilgherries.—On the Neilgherries, *coffee plantations, potatoe* plants, *corally, samai,* and *raggy* were thriving, and *ganjay, wheat,* and *keeray* were sown.

Salem.—Tanks in the Trichengode, Attur, Oossoor, Tripatore, and Kistnagherry Taluks of the Salem District, received from one and a half to two months' supply of water. Cultivation of dry grains under wells commenced, and the standing crops were in good condition. The yield of the *cotton* crop in Trichengode was very poor owing to the absence of timely rains. Heavy rain accompanied by a violent gale fell in the town of Tripatore on the 20th and 22nd of the month, causing great damage to the avenue trees.

Prices fluctuated in Salem, and rose slightly in Coimbatore.

Fever and cholera were in existence in both the districts of Salem and Coimbatore, but there was no serious loss of life.

Cattle suffered from disease and also from the scarcity of pasture and water in Salem.

WEST.—There was a general, though not abundant, fall of rain in South Canara. The third-crop rice and dry grains were harvested, and ryots commenced the cultivation of first-crop rice.

The prices of *rice* and *wheat* rose a little; those of the other articles were stationary.

Both men and cattle were generally healthy.

Malabar.—The sowing of the kanny or first crop is nearly completed in most of the taluks. There were very few showers about the beginning of the month, but latterly the rainfall was favourable. Fever and small-pox are on the decrease. Prices of grain have not fluctuated to any material extent.

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Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency for the Month of May 1870, *Fusly* 1279.

DISTRICTS.		Prices of Grain and Sea Salt.												Rainfall.				
		2nd sort Rice.		2nd sort Paddy.		Cholum.		Raggy.		Horse Gram.		Sea Salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Fusly		Fusly		Fusly		Fusly		Fusly		Fusly						
		1278	1279	1278	1279	1278	1279	1278	1279	1278	1279	1278	1279					
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam.........	289	255	116	106	213	186	242	132	179	167	290	320	0·10	0·40	...	1·0	0·37
	Vizagapatam..	380	305	168	129	222	165	217	155	291	169	252	316	1·40	0·50	0·20	1·25	0·83
	Godavery.......	284	240	136	105	165	127	160	118	196	183	238	274	0·75	...	0·14	0·20	0·27
	Kistna...........	350	340	161	153	148	203	157	160	217	216	278	343	0·89	0·85	0·13	1·10	0·74
	Nellore	363	350	172	166	155	182	136	153	203	256	263	324	0·90	...	0·70	0·77	0·59
Ceded Districts.	Cuddapah......	407	419	184	188	174	199	165	175	189	225	297	356	1·75	1·26	0·15	1·47	1·16
	Bellary...... ...	356	377	148	162	124	178	110	152	147	214	363	429	0·81	1·16	2·53	2·05	1·63
	Kurnool........	443	403	180	176	148	196	151	183	211	244	331	363	0·50	0·80	0·80	0·90	0·75
East Centre.	Madras....	444	345	198	147	240	221	245	205	265	254	267	296	0·03	...	...	0·20	0·05
	North Arcot. .	395	331	171	142	201	193	234	168	183	172	241	297	2·20	2·20	1·0	1·80	1·80
	South Arcot. .	401	289	166	137	220	140	214	156	215	169	280	326	0·52	0·05	...	0·70	0·31
Cauvery.	Tanjore.........	349	271	159	133	194	137	170	137	185	191	254	303	0·40	...	...	...	0·10
	Trichinopoly..	369	293	162	132	159	135	191	141	204	157	265	327	0·81	...	...	1·27	0·52
Southern Section.	Madura.........	405	350	183	168	194	200	180	144	192	128	288	333	1·07	1·50	1·70	0·47	1·18
	Tinnevelly.	391	384	184	176	...	163	195	183	201	207	286	344	0·52	0·30	...	0·40	0·30
West Centre.	Coimbatore ...	442	405	219	199	284	252	225	192	258	167	338	382	3·15	0·28	2·18	0·68	1·57
	Neilgherries...	533	582	...	...	291	320	246	291	267	267	...	...	...	...	3·09	1·55	2·82
	Salem..........	375	335	164	147	208	173	177	148	181	141	300	347	2·96	1·72	3·31	0·92	2·22
West......	South Canara.	350	367	151	166	...	...	222	231	262	266	254	284	0·85	0·95	0·01	1·75	0·76
	Malabar........	441	412	203	196	...	...	194	154	278	251	290	339	13·86	9·43	13·88	16·24	3·69

Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of May 1870, *Fusly* 1279.

	DISTRICTS.	Cotton.				Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo.				Market rate of Cake Indigo per Maund of 25 lbs.
		Fusly 1278.		Fusly 1279.			Fusly 1278.		Fusly 1279.		
		Extent.	Assessment.	Extent.	Assessment.		Extent.	Assessment.	Extent.	Assessment.	
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	365	391	84	98	158	......	......	......	......	75
2	Vizagapatam ...	1,984	2,358	630	558	162	181	800	19	100	49
3	Godavery ...	......	......	13	38	167	......	......	......	......	68
4	Kistna ...	......	......	......	......	159	......	......	......	... ..	56
5	Nellore ...	......	......	8	15	160	1,151	2,803	2,156	5,690	51
6	Cuddapah ...	95	44	144	47	120 to 240	670	3,068	1,434	7,039	40 to 70
7	Bellary ...	......	......	24	11	163	497	1,800	194	219	64
8	Kurnool ...	......	......	......	......	154	......	......	......	......	56
9	Madras ...	......	......	......	......	100	107	509	92	250	47
10	North Arcot ...	......	......	......	......	150	1,240	2,898	3,365	6,076	50
11	South Arcot ...	36	78	103	184	133	1,951	4,101	2,976	4,572	43
12	Tanjore ...	31	62	1,227	1,666	155	65	77	822	2,007	25
13	Trichinopoly ...	......	......	292	173	129	......	......	......	.....	14
14	Madura ...	950	1,123	442	629	100	2	6	6	20	40
15	Tinnevelly ...	14	14	......	......	158	......	......	......	......	31
16	Coimbatore ...	1,385	931	291	184	132	......	......	......	......	29
17	Salem ...	1,329	2,128	365	632	193	10	21	114	255	36
	Total...	6,189	7,129	3,673	4,225	......	5,874	16,083	11,178	26,228	......

Revenue Board Office,
Madras, 24*th June* 1870.

(Signed) J. GROSE,
Acting Secretary.

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ACT OF THE GOVERNMENT OF INDIA.

Act No. XII. of 1870.

THE NATIVE PASSENGER SHIPS' ACT, 1870.

An Act for the regulation of Native Passenger Ships and of Steam Vessels intended to convey passengers on coasting voyages.

Preamble.

Whereas abuses have occurred in the over-crowding of ships conveying native passengers between ports and places in India, and ports and places in the Red Sea or Persian Gulf; and whereas similar abuses have also occurred in the case of ships commanded or owned by subjects of Her Majesty and conveying native passengers between other ports and places situate east of the Cape of Good Hope and ports and places in the Red Sea or Persian Gulf; and whereas it is expedient to prevent such abuses, and to provide for the regulation of all such ships as aforesaid which shall depart from, or arrive at, any of the said ports or places in India, and also for the regulation of steam vessels intended to carry passengers on coasting voyages; It is hereby enacted as follows:—

Chapter I.

Preliminary.

Short title.

1. This Act may be called "The Native Passenger Ships' Act, 1870."

Extent of Act.

2. This Act extends to all subjects of Her Majesty whether within British India or within the dominions of Princes of States in India in alliance with Her Majesty, and to all persons being native Indian subjects of Her Majesty without and beyond British India.

Act not to apply to ships-of-war, &c., any foreign Prince or to sea-going steam vessels conveying public mails.

Nothing in this Act applies to any ship-of-war or transport belonging to, or in the service of, Her Majesty, or to any ship-of-war belonging to any foreign Prince or State, or to any ship under contract with the Government of any European State, or to any sea-going steam vessel employed in the conveyance of the public mails under a contract.

Repeal of Act.

3. Act No. XXI of 1858 *(for the regulation of Native Passenger Ships, and of Steam Vessels intended to convey passengers on coasting voyages)* is hereby repealed; and Section 1 of Act No. II of 1860 *(to amend the law relating to the carriage of passengers by sea)* shall be read as if, for the words and figures "Act XXI of 1858," the words and figures "The Native Passenger Ships' Act, 1870," were substituted.

Interpretation clause, "Magistrate."

4. In this Act—

The word "Magistrate" means a person exercising powers not inferior to those of a Subordinate Magistrate of the 1st Class, and includes a Justice of the Peace, and, at the port of Aden, the Political Resident and his Assistants:

"Local Government."

The words "Local Government" mean the person or persons for the time being immediately administering the Executive Government of the territories where the port or place in question is situate:

"Master."

The word "Master" includes every person having command or charge of a vessel:

"Native Passenger Ship."

The words "Native Passenger Ship" mean a vessel carrying more than thirty passengers, being natives of Asia or Africa, which may depart or proceed on any voyage from a port or place in British India or in the said dominions to any port or place in the Red Sea or Persian Gulf, or which may arrive at any port or place within British India or the said dominions from any port or place in the Red Sea or Persian Gulf, having on board more than thirty such passengers.

Chapter II.

Rules as to Native Passenger Ships.

Native passenger ship to sail only from ports appointed by Government.

5. No native passenger ship shall depart or proceed upon any voyage to which this Act extends from any port or place within British India or the said dominions other than such ports and places as the local Government may from time to time appoint; and, after any native passenger ship has departed or proceeded upon any such voyage from a port or place so to be appointed, no person shall be received on board as a passenger, except at some other duly appointed port or place.

Not to sail without obtaining a certificate.

6. No native passenger ship shall depart or proceed upon any such voyage from any port or place appointed under this Act until the Master shall have obtained a certificate from an officer authorized to grant the same.

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7. If any native passenger ship departs or proceeds upon a voyage from any port or place within British India or the said dominions,

Penalty.

or if any person is received as a passenger on board a native passenger ship in contravention of the provisions of Section 5 or 6,

the owner or Master shall, for every passenger conveyed on a ship unlawfully departing or proceeding on such voyage, or for every passenger unlawfully received on board, be liable to a penalty not exceeding 100 rupees, or to imprisonment not exceeding one month, or to both;

and the ship, if found within two years in any place within British India, may be seized and detained by any Chief Officer of Customs until the penalties incurred under this Act have been adjudicated, and the payment of the fines imposed under this Act, with all costs, has been enforced under the provisions of Section 35.

8. Within British India, the local Government shall appoint such persons as it may deem proper to exercise or perform the powers and duties conferred and imposed by this Act.

Appointment of Officers.

9. The Master of any native passenger ship sailing from any port or place appointed under this Act shall give notice to the proper officer that the ship is to carry native passengers and of her destination, and of the proposed day of sailing;

Master to give notice of day of sailing, &c.

such notice shall be given not less than three days before the proposed day of sailing.

10. After receiving such notice, the officer aforesaid, or any person authorized by him, shall be at liberty at all times to enter and inspect the ship and the fittings, provisions, and stores therein;

Power to enter and inspect ship.

and any person impeding or refusing to allow such inspection shall be liable, on conviction, to a fine not exceeding 500 rupees for each offence, or to imprisonment for a term not exceeding three months, or to both.

11. The officer aforesaid may, if he think fit, cause the ship to be surveyed at the expense of the Master by a competent Surveyor, who shall report whether the ship is, in his opinion, seaworthy and fit for her intended voyage.

Ship may be surveyed.

Officer to be satisfied before giving certificate

12. The officer aforesaid shall not give his certificate unless he shall be satisfied—

(1.) That the ship is seaworthy and properly manned, equipped, fitted, and ventilated, and has not on board any cargo likely, from its quality, quantity, or mode of stowage, to prejudice the health or safety of the passengers.

That the ship is seaworthy.

(2.) That the space appropriated to the passengers in the between-decks contains at the least twelve superficial and seventy-two cubical feet of space for every adult passenger on board, that is to say, for every passenger above twelve years of age, and for every two passengers between the ages of one year and twelve years.

That the space between decks for passengers is sufficient.

(3.) That a space of four superficial feet per adult is left clear on the upper deck for the use of the passengers.

That the space on the upper deck is sufficient.

(4.) That provisions, fuel, and water have been placed on board, of good quality, properly packed, and sufficient to supply the passengers on board during the declared duration of the intended voyage, according to the scale hereinafter contained.

That there is a due supply of provisions.

13. No such ship shall carry any greater number of passengers than, together with the Master and crew, shall amount to the proportion of two persons for every three tons of the registered or estimated tonnage of the ship.

Number of passengers.

14. The Master of any such ship, before departing or proceeding on any such voyage from any port or place in British India, shall sign two lists, specifying (as accurately as may be) the names of all the passengers, and stating the number of the crew; and shall deliver them to the officer aforesaid, who shall thereupon (after having first mustered the passengers and compared the number and names of such passengers with the lists) countersign and return to the Master one of such lists.

List of passengers.

The Master shall note in writing on such last-mentioned list, and on any additional list to be made under this Act, the date and supposed cause of death of any passenger who may die on the voyage, and shall forthwith, on the arrival of the ship at her destination or at any port at which it may be intended to land passengers, and before any passengers are landed, produce the list, with any additions hereto made, to any persons lawfully exercising Consular authority on behalf of Her Majesty at the port of arrival if it be a foreign port, or to

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the Chief Officer of Customs, or the officer (if any) appointed under this Act, at any port or place at which it shall be intended to land the passengers or any of them.

In case of non-compliance with any of the requirements of this section on the part of the Master, or if any false entry be wilfully made by him in any such list, the Master shall be liable to a fine not exceeding 500 rupees for each offence, or to imprisonment for a term not exceeding three months, or to both.

Ship taking additional passengers and touching at intermediate ports.

15. If, after the ship shall have departed or proceeded on any such voyage, any additional passengers are taken on board at a port or place within British India or the said dominions, appointed under this Act for the embarkation of passengers,

or if such ship shall, upon her voyage, touch or arrive at any such port, having previously received on board additional passengers at any place beyond British India or the said dominions, the Master shall obtain a fresh certificate from the officer at such port, and shall make lists of all such additional passengers; and all the provisions hereinbefore contained in that behalf shall be applicable to any certificate granted or list made under this section.

In case the Master fail to obtain any such fresh certificate, or to make any such list of additional passengers, he shall be liable to a fine not exceeding 500 rupees, or to imprisonment for a term not exceeding three months, or to both.

Penalty for fraudulent alteration in ship after certificate obtained.

16. If any Master of a ship, after having obtained a certificate under Section 6 or Section 15 of this Act, shall fraudulently do, or suffer to be done, any act or thing whereby such certificate shall become inapplicable to the altered state of the ship, its passengers, or other matters to which such certificate relates, he shall be liable to a fine not exceeding 2,000 rupees, or to imprisonment not exceeding six months, or to both.

Information to be transmitted to ports of embarkation.

17. The Chief Officer of Customs, or the officer (if any) appointed under this Act, at any port or place within British India at which the ship shall touch or arrive, shall, with advertence to the requirements of this Act, transmit any particulars which he may deem important respecting the ship and the passengers conveyed therein, to the officer at the port from which the ship commenced her voyage, and also to the officer at any other port within British India or the said dominions where the passengers or any of them embarked.

Report of Consul, &c., to be admissible in evidence.

18. In any proceeding for the adjudication of any penalty incurred under this Act, any document purporting to be a report of such particulars as are referred to in the last preceding section, or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising Consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if the same appears to have been officially transmitted to any officer at, or near, the place where the proceeding under this Act is had.

Depositions to be received in evidence when witnesses cannot be produced.

19. Whenever, in the course of any legal proceeding instituted under this Act at any port or place in British India, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition that such witness may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same local Government as the port or place where such proceedings are instituted) or any British Consular Officer elsewhere, shall, if authenticated by the signature of the Justice, Magistrate, or Consular Officer, be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceedings are instituted:

Provided that, if the proceeding is criminal, such deposition shall not be admissible unless it was made in the presence of the person accused, and the fact that it was so made is certified by the Justice, Magistrate, or Consular Officer.

It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

Length of voyage to be fixed by proclamation.

20. Within British India, the local Government may, by any proclamation to be from time to time issued for that purpose and published in the Government *Gazette* (if any), or in one of the public newspapers, declare what shall be deemed, for the purposes of this Act, the duration of the voyage of any native passenger ship from any port or place in British India or the said dominions to any other port or place.

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21. Every native passenger ship, at the time of departure from the port or place at which passengers shall be embarked under this Act, shall have on board good and wholesome provisions for the use and consumption of the passengers, over and above the victualling of the crew, to the amount or in the proportion following, that is to say, a supply of water to the amount of five gallons to every week of the declared duration of the voyage for every passenger on board, such water being carried in tanks or sweet casks, and a supply of rice, flour, oatmeal, or bread-stuffs to the amount of seven pounds weight to every week of such duration voyage for every such passenger;

Quantity of provisions and water to be shipped.

provided that, when any such ship shall be destined to call at a port or place in the course of her voyage for the purpose of filling up her water casks, a supply of water at the rate before mentioned for every week of an average voyage to such port or place of calling, shall be deemed to be a compliance with this Act.

The provision of this section regarding food shall be deemed to have been complied with in any case where it shall appear that, by the special authority of the local Government, any other articles of food were substituted for the articles above enumerated as being equivalent thereto.

22. The requirements of this Act respecting the supply of provisions for passengers shall not, except as to the supply of water, be applicable to any passenger who may have contracted to furnish his own provisions.

Contract by passengers for supply of their own provisions.

23. If any ship, bringing passengers from any port or place east of the Cape of Good Hope and not within British India or the said dominions to any port or place within British India or the said dominions, shall have on board a greater number of passengers or persons than in the proportion prescribed by this Act, the Master of such ship shall, in addition to any other penalty which he may have incurred under the provisions of this Act, be liable, on conviction, for each person in excess of such proportion to a fine not exceeding 50 rupees, or to imprisonment not exceeding one month, or to both.

Penalty on ships bringing excessive number of passengers from certain foreign ports to Indian ports.

24. In the case of every native passenger ship sailing from any port within British India to any port in the Red Sea, the officer whose duty it is to grant a port clearance for any such ship shall not grant such clearance unless, and until, the owner, agent, or Master of such ship and two sureties resident in British India shall, by a joint and several bond, have become bound unto the Secretary of State for India in Council in the penal sum of Rupees 5,000 conditioned to be void if the said ship touches at Aden on her outward and also on her homeward voyage, and does not leave that port without having obtained from the proper authority a clean bill of health.

Bond when ship clears for a port in Red Sea.

25. Every ship carrying more than thirty passengers, being natives of Asia or Africa, and sailing from any port east of the Cape of Good Hope to any port in the Red Sea,

Ships sailing to, or from, a port in Red Sea to touch at Aden.

or sailing from any port in the Red Sea to any port east of the Cape of Good Hope,

shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

Every Master of a ship offending under this section shall, for every such offence, be liable to a fine not exceeding 2,000 rupees, or to imprisonment not exceeding six months, or to both.

26. No bill of health shall be granted under Section 24 or 25 in case the ship has on board a greater number of passengers or persons than in the proportion prescribed by this Act.

Bill of health.

Chapter III.

Coasting Steamers.

27. Steam vessels intended to carry passengers on coasting voyages from, or to, any port or place within British India, shall, before proceeding on such voyages, be furnished with certificates granted in manner hereinafter provided.

Certificates to be furnished to coasting steam vessels intended to carry passengers.

28. Every such certificate shall be granted at the discretion of an officer authorized by the local Governmet to grant the same, and shall remain in force for the period therein specified, unless sooner revoked.

Certificates to coasting steam vessels how to be granted, &c.

The officer so authorized shall not grant such certificate, or suffer the same to remain in force, unless he is satisfied, by inspection or survey (to be made at least twice in each year at the expense of the Master or owner, and upon payment of a fee not exceeding 20 rupees), that such steam vessel is seaworthy and properly equipped with boats and otherwise, and that the engines and machinery are in a fit state to enable her to proceed on her voyage.

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The certificate shall state the limits (if any) within which the vessel is to ply, and the number of native passengers which the vessel is permitted to carry: such number to be subject to such conditions and variations according to the time of year, the nature of the voyage, and the cargo carried, as the case requires.

Copy of certificate to be placed in conspicuous part of ship.

29. The owner or Master of any such steam vessel shall put up in a conspicuous part of the ship, so as to be visible to persons on board the same, a copy of the said certificate, and shall cause it to be continued in such position so long as the certificate remains in force; and in default, such owner or Master shall, for each offence, be liable to a fine not exceeding 200 rupees, or to imprisonment for any term not exceeding a month, or to both.

Penalty for excess of number specified in certificate.

30. If such steam vessel has on board thereof any number of passengers which, having regard to the time of the year and other circumstances, is greater than the number allowed by the certificate, the owner or Master shall, for every passenger over and above the number allowed by the certificate, be liable to a fine not exceeding 20 rupees, or to imprisonment not exceeding one week, or to both.

Penalty for proceeding without certificate.

31. If any such steam vessel shall proceed on any such voyage without such certificate as aforesaid, the owner or Master shall be liable to a fine not exceeding 500 rupees, or to imprisonment for any term not exceeding three months, or to both.

Grant or revocation of certificate to be subject to control of Government.

32. In the grant or revocation of any certificate under this Act, the officer granting or revoking the same shall be subject to the control of the local Government or of any intermediate authority which that Government may appoint.

Chapter IV.

Miscellaneous.

Penalty on landing passenger at a place other than that at which he has contracted to land.

33. If any native passenger in any ship shall be landed at any port or place other than the port or place at which he may have contracted to land, unless with his previous consent, or unless such landing is made necessary by perils of the sea or other unavoidable accident, the Master shall, for each offence, be liable to a penalty not exceeding 200 rupees, or to imprisonment for any term not exceeding a month, or to both.

Passenger's right of action preserved.

34. Nothing in this Act contained shall take away or abridge any right of action which may accrue to any native passenger or to any other person, in respect of the breach or non-performance of any contract made with the Master or owner of the ship or his agent.

Adjudication of offences.

35. All offences against this Act shall be punishable in a summary manner by a Magistrate.

Fine leviable by distress on ship.

If the person on whom any fine is imposed under this Act is the Master or owner of a ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture, and apparel.

Jurisdiction.

36. For the purpose of the adjudication of penalties under this Act, every offence hereunder shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

By whom proceedings for penalties to be instituted.

37. The penalties to which Masters and owners of ships are liable by this Act shall be enforced only by information laid at the instance of the officers appointed to grant certificates under this Act; or, at any port or place where there is no such officer, by the Chief Officer of Customs.

Application of fines.

38. Any Magistrate imposing any fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such fine is imposed, or in, or towards, payment of the expenses of the proceedings.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

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